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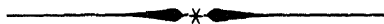
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THE
IMPACT OF THE WAR
ON AMERICA

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ON AMERICA



SIX LECTURES BY
MEMBERS OF THE FACULTY OF
CORNELL UNIVERSITY



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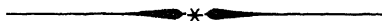
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P R E F A C E



THE LECTURES contained in this volume were delivered in February and March, 1942, at Cornell University. The series was planned in the hope that it might bring to undergraduates a clearer understanding of the effects which the war might be expected to have upon important aspects of American political life. The lectures are published in the hope that they may have a similar value for readers outside the circle of the University. The subjects were chosen and the main outlines of the lectures were drawn before the United States entered the war. But this important event had cast its shadow before, and while its occurrence changed the emphasis in some of the lectures, it made the purpose of the series not less but more urgent.

It was no part of the lecturers' intention either to stir the feeling inseparable from the issues of the war or to compete with the day-to-day commentators on the news. The assumption behind the series is that there are long-term interests, both of domestic and of foreign policy, which need above all to be understood. These interests are neither of

yesterday nor of today, nor will they be exhausted to-morrow; but are part of the permanent warp and woof of American politics. The war will inevitably affect them, but whether for good or ill depends upon the wisdom and foresight with which the American people conceives its national purposes. To contribute in some degree to this clarity of vision is the service which a group of scholars may most reasonably hope to perform.

EDMUND E. DAY

Ithaca, New York
March 20, 1941

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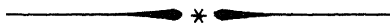
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THE IMPACT OF WAR ON THE CONSTITUTION

ROBERT E. CUSHMAN



THE CONSTITUTION of the United States is a document of some six thousand words. If one reads it all through, as I suspect few of us have ever done, it takes about half an hour. The war is not going to destroy this document, nor change these words. But our Constitution is much more than a document. It is a body of basic principles, expressed in the words of the Founding Fathers, in court decisions, in acts of Congress, and in governmental practices and customs, in accordance with which the American system of government actually works. These principles embody our American governmental way of life. In a very broad sense they are what we are fighting about, for the fate of constitutional democracy is the vital stake of this war. And upon the American Constitution, thus broadly defined, the war is going to have a serious and far-reaching impact.

It is a cruel paradox that a war to save constitutional democracy can be waged only by sacrificing some of that constitutional democracy. We are compelled to streamline

our governmental machine, and that means that we must scrap a large part of our beloved system of checks and balances. To get the ship to port, we must throw overboard valuable cargo, and part of that cargo is some of the peacetime civil liberty of the citizen. We are driven to rely on the brutal principle that the end justifies the means. Lincoln wrote to a friend in 1864, "Often a limb must be amputated to save a life, but a life is never wisely given to save a limb; I felt that measures otherwise unconstitutional, might become lawful by being indispensable to the preservation of the Constitution through the preservation of the nation. Right or wrong I assumed this ground and I now avow it." ¹ In time of national peril few will quarrel with that doctrine. I think it is very important that we should know and appraise the impact which this war will have on the Constitution. Only so can we hope to accept with becoming philosophy the constitutional sacrifices which are necessary. Only so can we hope to prevent constitutional sacrifices which are not necessary. And only so can we know clearly what we must try to get back again when the war has been won.

I wish to divide my discussion into three parts. I do this because the War is bound to bring drastic changes to three major relationships which the Constitution sets up. I shall deal first with the impact of the war on the relation between the nation and the states—an impact from which the federal government will gain and the states will lose. Second, I shall discuss the effect of the war on the relations between Congress and the President—and here the President will gain and Congress will lose. Third, I shall show how the war will change the relation between the government and the citizen—the impact of the war on civil liberty. And here, whether the government gains or not, the citizen will lose.

I shall analyse the kind and degree of change which the war will bring in each of these three areas; and I shall also try to appraise in each case our chances of getting back again when the war is over the things we may have lost.

Let us turn first, then, to the changes which the war is making in the normal peacetime relations between the federal and state governments. We meet at the outset the unquestioned fact that war is a national responsibility. We learned this by bitter experience during our War for Independence and the chaotic years of the Articles of Confederation. Decentralized piece-meal control of military and diplomatic affairs proved a calamitous failure. So it was not by inadvertance that the Constitution states, "No state shall enter into any treaty, alliance or confederation . . . or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." The Constitution thus makes foreign relations and war national monopolies.

How, then, will a war in which the nation is fighting for its life affect the normal equilibrium between the federal government and the states? The answer is somewhat as follows. In the first place, the federal government will take over large and important areas of governmental control which ordinarily belong to the states. There are no subject-matter limitations on the national war power. The federal government must step into any situation and manage and control anything necessary and helpful to the war effort. Prices, profits, wages, hours, rents, production, priorities, rationing, transportation, communication, disease, prostitution, and many other things are swept within the reach of federal power. And as the federal government moves forward to deal with these matters, the states must move back. Under our Constitution federal law is supreme, and no state

law or state policy, no theory of state autonomy, can obstruct or conflict with the valid exercise of federal power.

In the second place, however, the states are not barred from cooperation in the war effort. Far from it. They can and must help in vitally important ways. They help by serving as agents of the federal government in carrying out many federal laws and policies. The draft is administered by countless local and state officials acting under federal supervision. Wartime rationing will be enforced through state, county, and local officers; and the success of any national program of civilian defense depends upon a well-supervised, but local, administration. When it is wise to do so the federal government will borrow the machinery of states and cities to carry out its war program. But in aiding the war effort the states are not limited to serving as federal agents under federal direction. In many fields of war endeavor the states will be left in responsible control. Just as we do not have federal fire departments, so there are many wartime concerns of local communities which can be better dealt with by the home people than by federal agents. This is particularly true of problems of community defense. In the last war we did not worry much about defense. In this war we do. The work being done by state and local defense councils shows how important and varied are the services which state and local governments can render to the total war effort. The right of the states thus to cooperate in time of war was upheld by the Supreme Court in 1920.² It held valid a Minnesota statute making it a crime to discourage enlistment in the armed forces of the United States. The Court said in substance that the state as such had a stake in winning the war and could properly use its police power for that purpose.

But while the states may help in time of war, they must not get under foot. They must not obstruct the federal exercise of war power, and they must not act at all in matters where national uniform control is required. A year ago the Supreme Court held invalid the Pennsylvania Alien Registration Act.³ Congress has passed its own Alien Registration Act and competing or supplementary state laws on that subject are barred. Thus in the great enterprise of winning the war the American state plays a humble but useful role. As Governor Lehman told the New York Legislature in January, "We are a cog in the large wheel of America."⁴

Will the states get back again after the war the power and the prestige which they have lost? I think they will probably get back most of it. When peace comes the federal government will disgorge many of its war powers. It will retire from certain areas of control and turn them back to the states. But few of us believe that peace will bring an end to the national emergency, or that the federal government can fail to continue a mammoth program of national defense. Nor will the states be able to stem the steady tide of federal centralization which does not come from war but which is the inevitable peacetime result of the ever-growing unity of American national life.

This brings me to my second main topic, the impact of the war on the relations between the President and Congress. The result here is clear and unmistakable—the President will overshadow Congress in any first-rate war, and when it comes to total war, the President becomes the undisputed head of the nation. This is due to the kind of job that running a war is. It is an executive job. We cannot win a war by putting it in charge of a debating society. Throughout the world's history wars have been directed by kings,

by dictators, by generals, by presidents, but never by legislatures. In times of peace we may allow ourselves the luxury of being slow and inefficient, and may give free play to the checks and balances which the Founding Fathers loved so much. A cynical observer of American city government of thirty years ago remarked that the normal democratic method of getting a municipal job done was to give it to a board of six, three of whom favored doing it and three of whom opposed it. But checks and balances cannot be allowed to obstruct the conduct of war. The framers of our federal Constitution knew this, and they vested in the President the executive power of the United States, and they made him Commander-in-Chief of the Army and Navy.

The vast authority of the President in time of war rests on three grounds. It rests first upon his constitutional power as Commander-in-Chief. That power is not further defined, but it is a power of tremendous sweep. It makes the President, as Professor Corwin puts it, "the custodian and the wielder within the United States itself of the physical forces of the national government."⁵ As Commander-in-Chief Lincoln issued the Emancipation Proclamation; as Commander-in-Chief Woodrow Wilson created the War Industries Board, and armed American merchant ships after Congress had refused him permission to do so; as Commander-in-Chief President Roosevelt sent American armed forces to Iceland and Dutch Guiana, and ordered lease-lend cargoes conveyed by the American Navy.

In the second place, tremendous war powers are given to the President by Congress. It would be difficult for Congress to pass a war statute which did not grant power to the President. During the last war Congress passed nearly a hundred laws giving emergency powers to the President,

and that list will be equalled or surpassed before this war is over. These laws deal with all kinds of things. They authorize the President to take over the nation's railroads and power facilities, to close the stock exchanges, and to reorganize the departments and bureaus in the executive branch of the government. They authorize him to direct the spending of stupendous sums of money which Congress appropriates for war purposes. Congress seems willing to give to the President every power which he can reasonably use in the effective discharge of his great responsibilities.

Third, the President's great authority rests on the firm basis of popular approval. Public opinion supports and demands this vast concentration of power. The President's appointment of Mr. Nelson as "czar" of American production was hailed with enthusiastic and universal approval. One hears in wartime no charges of usurpation or dictatorial ambition such as were rife during the bitter fights over the President's Supreme Court proposal and administrative reorganization plan. There are those who may wish someone else were President. There are those who criticize the way in which the President uses his war powers. But, so far as I am aware, no one seems to feel that we are making the Presidential office too powerful. Any attempt by Congress to withhold from the President any powers needed by him for the management of the war would cause bitter popular resentment. In fact the strongest foundation for the President's wartime leadership is the demand of the people that he should lead.

But while the President overshadows Congress in time of war, Congress will not be completely blacked out. War cannot be carried on without its aid, and while it may be pushed into the background, there are two very important

functions which it must perform. First, it must formulate and pass legislation. The President and his advisers may assume leadership in shaping wartime policies, but those policies have to be enacted into law. The country cannot be governed by executive orders and military regulations. Laws must be in the statute books where people can find them and know what they are. Congress cannot abdicate its legislative responsibilities. The Constitution provides that no money shall be paid out of the Treasury unless Congress appropriates it by law, and Congress, not the President, must levy the taxes to pay the costs of war. Conscription, price-control, and other important policies must be made into law by the people's representatives, not by executive edict. Second, Congress should render the great public service of appraising and criticizing the management of the war. Even the self-appointed and often badly informed private critic, who is vocally certain that nothing is being honestly and efficiently done, is a useful reminder that the processes of democracy are still at work. But critics in Congress are not self-appointed; they are put there by the people. They need not be badly informed; it is their privilege and their duty to demand the information they need. I do not pass any judgment on how well the Truman Committee or the Vinson Committee or any other Congressional committee of inquiry may have done, or may be doing, their particular jobs. I only know that if, in the management of the vast and complicated war effort, inefficiency, favoritism, incompetence, or exploitation of the public interest creeps in, Congress is performing its clear duty in uncovering those evils and taking measures to get rid of them. It may be neither a pleasant nor a popular job, but it is a vitally important one.

Thus we see that war upsets the normal constitutional

balance between the President and Congress. It creates a sort of Presidential quasi-dictatorship. Is there danger that this will continue after the war is over? There are some unpredictable things which will bear on the answer to that question. We do not know whether the national emergency will be over when the war is over. There may be a continuing need for executive domination. Nor do we know what type of man will be President, or what powers of popular and political leadership he may possess. But I believe that when the war ends we shall bring the President back to a fairly normal position of peacetime leadership as chief executive of the nation. Two powerful forces will move in that direction. First, Congress will be alert to strip the President of as many of his emergency war powers as the public safety permits. It will do this because the need for these powers will have passed; and it will do it with enthusiasm because Congress does not enjoy playing second fiddle to the President. Many of the emergency powers will expire automatically when peace is established. Furthermore, the President must ask Congress every year for money with which to pay for anything which he does, and control of the purse-strings gives Congress an effective lever with which to restore the balance of power. When the last World War was over Congress passed an omnibus bill repealing some sixty statutes giving emergency powers to the President. The vote was unanimous in the Senate; it was 343 to 3 in the House.

Second, unless human nature has changed, there will be a sharp popular reaction against executive domination and wartime discipline when the war is over. The American people do not enjoy being ordered around. They will fall in line and obey orders when the public safety requires it. But they claim back their freedom of action as soon as they can,

and they have sometimes turned with devastating results upon a President whom they suspected of arrogating to himself more power than they believed to be necessary and safe. When Woodrow Wilson, who was leading the nation to victory, appealed to the country to support his leadership by choosing a Democratic Congress in the elections of 1918, the people, resenting his dictation, responded by returning a Republican House and a Republican Senate. And when, the war over, Wilson sought by personal and Presidential leadership to force the American people along the path of idealism, sacrifice, and high responsibility into the League of Nations, the answer was the overwhelming victory of Warren G. Harding—a stunning rebuke to Presidential domination. The Republican Platform in 1920 promised the “end of executive autocracy”; and Mr. Harding’s most alluring qualities proved to be humility, amiability, and mediocrity. He assured the country that he was just an average American, and he would not try to lead. And so I think the American people will insist that the President disgorge his wartime powers when the war is over, and history shows that they have ways and means of getting what they want. Perhaps we may leave the matter with the words of Lincoln, replying in 1863 to the charge that arbitrary Presidential power would outlast the war and permanently abridge the liberties of the people. He said, “I am [not] able to believe a man could contract so strong an appetite for emetics during temporary illness as to persist in feeding upon them during the remainder of his healthful life.”⁶

This brings us to the third and final section of my discussion—the impact of the war on the relations between government and the individual. How will the war affect constitutional civil liberty? There are two important topics

which belong here to which I can only allude in passing. First, it is clear that war has a shattering effect on the normal rights of property and contract. The mobilization of the country's entire economic system in the war effort sweeps before it rights to the possession and use of property which, in time of peace, would lie beyond the reach of government's power. Before we have won this war we may find ourselves conscripting wealth and labor in addition to the man power now drafted for the fighting forces. But whatever questions of policy may enter in, there can be little doubt that what the government needs in the way of materials and labor to carry on the war, that the government may constitutionally take. Second, there are unique problems affecting the status of resident aliens in wartime. Some aliens have suddenly become enemy aliens, and these will either be locked up or placed under close surveillance. Other aliens are our friends, and some are our allies. All, however, will be subjected to some forms of restriction and to the supervision of the federal authorities. No new constitutional problems are so far raised by these general policies.

The most serious impact of the war will be upon the fundamental civil liberties of freedom of speech, freedom of the press, and freedom of assembly. Here lies our most serious danger. These are the civil liberties which will bear the brunt of war repression. Everyone knows that the First Amendment to the Constitution of the United States declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble; and to petition the government for a redress of grievances." One week after Pearl Harbor the country celebrated the one hundred and

fiftieth anniversary of the adoption of the Federal Bill of Rights, and leaders of public opinion from the President down filled the press and the radio with protestations of allegiance to the great constitutional guarantees of civil liberty. But it is one thing to avow one's loyalty to freedom of speech and freedom of the press, and a very different thing to understand what freedom of speech and press actually mean, and especially what they mean in time of war.

There is a body of opinion, luckily very small, which holds that in time of war our Bill of Rights goes into bankruptcy—that constitutional civil liberties are completely suspended. In 1917 a committee of the New York State Bar Association declared: "In time of war the laws are silent; during war civil rights may be suspended at the will of the Commander in Chief. The Constitution does not inure to the benefit of the public enemy, of spies, or of enemy sympathizers." ⁷ At the other extreme are those who maintain that the freedoms of speech and press are absolute and under no circumstances may constitutionally be diminished or abridged. The truth, of course, lies somewhere between these two extremes. Free speech and a free press are relative and not absolute rights. They are limited by the demands of national security. They embody a practical compromise of the conflict between individual freedom on the one hand and public welfare and safety on the other. In applying the constitutional guarantees of free speech and press, we face the difficult task of drawing the concrete lines which separate the speeches and publications which may be punished, from those which should remain free. That line must be drawn by the exercise of human judgment and in the light of circumstances, and every thoughtful person will agree that a total war in which our national security is in danger will

have a lot to do with where that line will be drawn. How, then, will the war deal with freedom of speech and freedom of press?

I think the answer to this question will depend on the behavior of four groups, four depositories of power and influence, in the American body politic. These are, first, American public opinion; second, American legislatures; third, American executive officers; and fourth, American courts. These are the forces, official and unofficial, which will determine what the impact of the war will be on constitutional freedom of speech, press, and assembly. Let us take these up in turn.

First, then, how will public opinion deal with freedom of speech and press in time of war? No one, of course, will rise to deny his loyalty to the Bill of Rights. Everyone believes in freedom of speech and press "in principle," as a Japanese diplomat would be likely to put it. But what the man in the street is willing to say about freedom of speech and press may be very different from what he will do about it as concrete situations arise out of the war. I wish there were more ground for optimism about this than there is. We must remember that the fair-mindedness and tolerance upon which any reasonable freedom of speech and press must rest are not born in us; they are cultivated virtues. It takes both individual and collective prudence and self-restraint to tolerate the free expression of minority views at any time; it takes a vast amount of it in time of war.

Serious danger lies in several directions. Public opinion can all too easily be whipped up to an hysterical and indiscriminating hostility to whole groups or classes of people, because in those groups some dangerous individual, some fifth columnist, may be lurking. Witness the growing

popular dislike of all aliens, no matter who or what they are, of all Communists regardless of what they do or what they say. There is a strong popular inclination to abandon any tests of individual guilt or misconduct and to condemn or harass people simply because you can pin a label on them. Professor Chafee in his brilliant new book, *Free Speech in the United States*,⁸ likens this attitude to that of an old Kentucky aristocrat in post-Reconstruction days who said that when he saw a Negro out after dark he always shot him because he knew he wasn't out for any good. Danger lies also in time of war in the encouragement and support given by public opinion to the witch-hunter and the vigilante. War-time emotions need some outlet, some scapegoat. There are no Germans or Japanese handy, but perhaps there are traitors or fifth columnists in our own communities. At any rate there are plenty of patriotic souls who are glad to try to find out, and their efforts seem to meet with pretty general public approval. During the last war you could join for a dollar a national organization which made you an unofficial spy-hunter. The same drive is under way now. In a recent speech Attorney General Biddle referred to it: "In the Department of Justice," he said, "we are swamped with letters from full-blooded Americans offering their services to the government. Does the F.B.I. need help? They are the boys to furnish it. They will round up the spies, the traitors, the fifth columnists."⁹ And so the professional patriots, the two-hundred per centers rise and flourish, inflame the public mind, and all too often encourage persecution, terrorism, and mob violence. No one will deny the obligation which rests on every citizen to render all possible aid to the enforcement of law and the prevention and discovery of crime. It may be that some of these self-appointed zealots are honest and patriotic,

and suffer only from the fault which Wendell Phillips is said to have attributed to our Puritan ancestors, of believing that hell is a place where everybody has to mind his own business. But not all of them are honest or patriotic. Many are brutally serving their own selfish ends. And whether well-intentioned or not they do incalculable harm. By their amateur and often illegal efforts they jeopardize our constitutional civil liberties. They cast contempt upon orderly government in a democratic community.

There are, however, several encouraging facts and factors which seem to be pulling American public opinion in the direction of toleration and fair play. These I shall mention only very briefly. The first of these is the depressing record of the last war during which there was widespread and brutal suppression of free speech and press and other serious invasions of civil liberty. No one can read Professor Chafee's book, *Free Speech in the United States*, to which I just referred, without a sense of national humiliation, for the whole story is dispassionately told there, and with relentless documentation. A great many thoughtful people, some of them in places of responsibility, are determined to see to it, if possible, that the blunders and excesses of the last war are not repeated. Second, Messrs. Hitler and Mussolini have given us a colorful picture of the suppression of civil liberty, done in a big way with real Nazi and Fascist efficiency. We do not like that picture. We do not relish the idea that we may be copying it. Abuses of civil liberty which our professional patriots used to try to justify or camouflage by talking about "Americanism" are now likely to be described as "Hitlerism," and that term has far less popular appeal. Third, there is an almost complete unity of opinion and feeling in the present war, for the simple reason that we were

suddenly and unexpectedly attacked. Honest opinion might have opposed our voluntary entrance into the war, and might thereby have created serious problems of free speech and press. But no one seems to oppose our defending ourselves against outside attack. Japan has unified the American people in a war effort as they have never been unified before. Fourth, through the fortunes of war we are allies of the Soviet Union. This has brought us the support in our war effort of the Communists and other Russian sympathizers. For years the Communists, who are both vociferous and tenacious, have provided us with our biggest single free speech and press headache. Hitler invades Russia and they cease to be a problem, since they no longer say things about the war which we do not wish to hear. What sort of problem they may create when the war is over I need not now discuss. But there would be irony as well as good luck in being able to fight this war without any great popular demand for the suppression of free speech, because of the lack of any unpopular speech to suppress.

A final encouraging factor has been the attitude so far of our national leaders. President Roosevelt, Attorney General Biddle, Mr. Willkie, and many other men who command national respect, have thrown their official and unofficial weight on the side of the widest possible protection of civil liberty of every kind. By so doing they make that cause respectable and help to neutralize the efforts of those calling for the suppression of civil liberty.

In the second place, how will constitutional freedom of speech and press fare during the present war at the hands of American legislatures? We may fairly judge the future from the past—and the present. We fought the Civil War without any legislative restrictions of free speech or press.

During the World War Congress passed the Espionage Act of 1917¹⁰ and the Sedition Act of 1918.¹¹ These were sweeping in their terms and were so applied as to curb drastically free public discussion. When the war was over the Sedition Act was repealed; the Espionage Act, which was relevant only to war, remained in suspended animation. It is now again in force. A vigorous drive was made in the 1920's to secure the passage of a federal peacetime sedition law, but the effort failed. The fight was won, however, in 1940. In that year Congress passed the Alien Registration Act.¹² Part of the act deals with aliens. The rest of it enacts the first federal peacetime sedition act since the obnoxious Alien and Sedition Acts of 1789. It places the most drastic congressional restrictions on freedom of speech and press in our entire history. I believe the act is dangerous for two reasons, though there is small likelihood that it would be found unconstitutional. It is dangerous, first, because it brushes off and puts to work again the discredited "bad tendency test" as applied to speech and publication. Under this test a speech or publication may be made punishable if under any set of circumstances, not necessarily present circumstances, it could possibly tend to produce results which the law forbids. Under this rule practically any public criticism of public officers or public policy, no matter how honest and well intentioned, may turn out to be a serious crime. And this was the way in which the Sedition Act of 1918 was applied in the last war. The Act of 1940 is dangerous, in the second place, because for the first time Congress has written into a federal statute the obnoxious doctrine of "guilt by association." We have built our law on the just doctrine that guilt is personal. We now abandon that doctrine. We not only make it a crime to indulge in subversive activities

or talk, but we also make it a crime to be a member of an organization or society which may later be found to have subversive purposes or to use subversive methods. Just keeping bad company is made a crime, without doing anything or saying anything which the law could reach. Furthermore, violation of this new law is one of the most serious federal crimes one can commit. The maximum punishment is ten years in the penitentiary and \$10,000 fine, a penalty more severe than that imposed for bribing a United States officer, stealing the United States mail, or embezzling public money.

State legislatures have often been more blood-thirsty than Congress in dealing with public discussion. Sedition and anti-syndicalism statutes are broadly drawn to make possible drastic curtailment of free speech and press. Four persons have recently been sentenced to ten years in the penitentiary in Oklahoma under the state criminal syndicalism statute, for having in their possession, when their premises were raided, books written by Marx, Lenin, and Stalin. A West Virginia statute makes criminal any teaching in sympathy with or in favor of "ideals hostile to those now or henceforth existing under the constitution and laws of this state." ¹⁸

I think we must conclude that neither Congress nor our state legislatures feel any real sense of responsibility for protecting freedom of speech and press either in peace or in war. They believe in giving to law enforcement officers plenty of rope—all the law they can possibly need to deal with troublesome and unpopular public discussion. I am not suggesting that our legislators demand or even desire all of the brutal restrictions on free speech and press which have so often occurred under these broadly drawn statutes. But they are clearly willing to pass laws which, as the ex-

perience of twenty years proves, permit and encourage serious invasions of constitutional civil liberty.

Let us turn, in the third place, to the executive branch of the government. How will our executive officers deal with freedom of speech and freedom of press during the present war? I can deal here only with the federal scene. It would be hard for our present Department of Justice to follow any course of action which would not be an improvement on the record set by that department during the last war under the leadership of Attorney General Palmer, with, it must be regretfully added, the tacit approval of Woodrow Wilson. This branch of our national government was converted into an enormous Gestapo. It did of course its customary job of discovering and punishing persons guilty of crime. But it also embarked upon an hysterical witch-hunt, directed particularly against aliens, with an incredible disregard both of decency and law. Its oppressive and illegal activities became so notorious as to invoke the public organized protest of leading members of the American bar,¹⁴ and to induce finally a sharp public reaction.

In contrast to this black record stands the present policy of our national executive officers. President Roosevelt has repeatedly put himself on public record as demanding the most solicitous regard for, and the maximum protection of, our constitutional civil liberties. And it must be remembered that the President cannot escape responsibility for the policy pursued in these matters by the Department of Justice. Mr. Biddle, the present Attorney General, has not only steadily restated and affirmed the President's position but has acted upon it. Interviewed not long ago he said: "In so far as I can, by the use of the authority and the influence of my office, I intend to see that civil liberties in this country are pro-

tected; that we do not again fall into the disgraceful hysteria of witch-hunts, strike breakings, and minority persecutions which were such a dark chapter in our record of the last World War.”¹⁵ He has followed this up by instructing all federal district attorneys to deal with alleged cases of subversive and disloyal conduct only after consultation with the Department in Washington, and in conformity with its temperate and cool-headed policy.¹⁶ Tremendous pressure will be brought on Mr. Biddle to abandon this sound position; there is no present evidence that he is likely to yield. This is important because the Department of Justice, with the support of the President, occupies a key position in protecting free speech and press from any possible federal interference. There is no way in which you can compel a federal district attorney to prosecute your neighbor for what you think is a violation of the Federal Sedition Act. There is no way in which Congress can compel him to start such a prosecution. The Department of Justice decides what sort of cases it will bring and how it will present them. Congress may permit the serious repression of free speech and press by making indictable almost any kind of public criticism; the Department of Justice may decline to act on that wholesale permission. It may so enforce the law as to punish criminals and protect the national security, but it may, if it wishes, refuse to enforce it in such a way as to destroy our traditional right of free public discussion.

The fourth influence which will help determine the fate of freedom of speech and press in the present war is the attitude of the American courts. What may we expect from our federal and state judges? Our experience with the judicial handling of free speech and press cases during, and immediately after, the last war was not very heartening. There

were, of course, honorable exceptions, but the reports show all too many cases in which harmless crackpots were convicted of serious crimes on flimsy evidence; in which legitimate public criticism of the government was punished as treason; and in which twenty-year prison sentences were imposed for wartime offenses which at the most would have drawn from any English court a sentence of a few months in jail or a medium-sized fine. Again I refer you to Professor Chafee's book for the complete record. It may be said in partial extenuation that there were no judicial precedents in this field, and that the trial judges were obliged to deal with the vital civil liberties guaranteed by the Constitution without any guidance from the Supreme Court of the United States. The first free speech case to reach the Supreme Court was decided in 1919,¹⁷ six months after the war was over, and the net result of all the Court's free speech cases arising out of the last war was to leave the line between lawful and forbidden speeches and publications about where the legislatures and juries had drawn it.

This judicial picture, however, has been radically changed and greatly improved. Since the wartime cases just mentioned, an impressive arsenal of judicial precedents has been built up clarifying the law of free speech and press and surrounding those civil liberties with important and badly needed protection. Since 1925 at least a dozen major cases have been decided in the Supreme Court involving constitutional freedom of speech, press, and assembly. These cannot be discussed here, but from them two important doctrines have emerged which should prove valuable judicial safeguards to civil liberty in time of war.

The first of these is the so-called doctrine of "clear and present danger," announced by Mr. Justice Holmes in the

Supreme Court's first wartime free speech case in 1919.¹⁸ This was abandoned by the Court, over the protests of Justices Holmes and Brandeis, in the other wartime free speech cases.¹⁹ It has been since restored and is now in good working order.²⁰ The doctrine lies, in fact, at the basis of the Court's decision of a few weeks ago reversing the conviction for contempt of court of Harry Bridges and the *Los Angeles Times* for allegedly objectionable newspaper comment on pending litigation.²¹ One cannot hope to improve on Mr. Justice Holmes's original statement of the clear and present danger test in the case of *Schenck v. United States*.²² *Schenck* was convicted of violating the Espionage Act of 1917 by circulating pamphlets urging people to resist the draft, and the Supreme Court upheld his conviction. Mr. Justice Holmes, speaking for the Court, said: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." The wise application of this test in free speech cases keeps alive the widest possible range of freedom of speech and press which is consistent with public safety. In time of war it protects from censorship or punishment speech and publication, unless, as Chafee puts it, "it is clearly liable to cause direct and dangerous interference with the conduct of the war."²³ It is, in my judgment, the only sound and safe rule.

The second judicial doctrine applicable to free speech cases is of a different kind. This is the doctrine, dating from about 1925, that the due process of law clause of the Fourteenth Amendment makes the fundamental guarantees of the First Amendment of the Federal Bill of Rights applicable to the states.²⁴ The due process clause provides: "No state

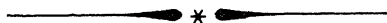
shall deprive any person of life, liberty, or property without due process of law." And the Supreme Court now holds that the term "liberty" used in that clause includes freedom of speech, freedom of press, freedom of assembly, and freedom of religion. The practical consequences of this doctrine are tremendous. During the last war there were no federal constitutional limitations to prevent a state from abridging or destroying freedom of speech and press. As everyone knows, the Federal Bill of Rights does not apply to the states; it applies only to the federal government.²⁵ Consequently any state legislature bent on abridging civil liberties needed to consult only its conscience and its own state constitution. By reading the First Amendment into the Fourteenth Amendment the Supreme Court has placed the states under federal discipline in matters of free speech and press. It is to the ingenuity and the intolerance of our state legislatures that we have owed many of our most brutal and unreasonable restrictions on the freedom of public discussion. This doctrine, by which the Supreme Court of the United States now stands guard over our civil liberties to protect them against state infringement, is a practical gain of the first magnitude.

Thus I think we may view with confidence and satisfaction the attitude likely to be taken by the American courts, especially the federal courts, in wartime cases involving freedom of speech and press. But it must be understood that courts alone cannot fully safeguard civil liberty. They can exercise at best only a negative check, and their decisions often come too late to prevent serious abuses. Furthermore, in protecting our civil liberties, the courts can work only at the periphery of the broad sphere of governmental authority; they can exercise only an outside check on legislative

as much civil liberty, as much freedom of speech, of the press, and of assembly, as the American people, functioning through the somewhat fumbling and uncertain processes of democracy, finally demand. That wise British statesman Edmund Burke said: "Constitutions must be defended by the wisdom and fortitude of men. These qualities no constitution can give. They are the gifts of God, and He alone knows whether we shall possess such gifts at the time we stand in need of them." There is an old story of an eastern king of most uncertain temper who ordered his astrologer to discover from the stars when the king would die. Having cast the horoscope the astrologer came to the king and said: "The stars do not reveal the date of thy death; they show only that it will follow immediately after my own." And so we may say of our civil liberties and the other basic principles on which our constitutional democracy rests; we do not know whether they will be seriously impaired, or when we shall get them back if they are temporarily suspended. But we do know that they will never be lost for good until after the intelligent will of the American people to keep them alive has died out.

THE IMPACT OF WAR ON AMERICAN LABOR

ROYAL E. MONTGOMERY



THE IMPACT of the war upon American labor cannot be discussed as a problem isolated from its impact upon the economic affairs of all the American people. Labor problems and conditions, far from being isolated phenomena, are affected by, and in turn affect, all economic conditions and all efforts to gear the economy to the necessities of a war.

Prosecution of a war unavoidably imposes extraordinary strains upon the economic life of a people. It produces arbitrary actions by government that, in democratic countries, are accepted only with great reluctance. It tends to reduce the standard of living of persons in every walk of life, demands subordination of the traditional economic goal of maximum pleasure and minimum pain to the goal of victory over the nation's enemies, brings into question the efficacy and desirability of public policies that have emerged from peacetime circumstances, invites reconsideration of the theretofore recognized rights and prerogatives of different economic classes, necessitates speedy mobilization of resources for achievement of the common end, and enhances

both the imperativeness and the difficulty of reconciling conflicts of economic interest. Where the attempt to win a war is being made within the framework of a democratic society, these strains are much greater than under dictatorships, which are more or less organized for permanent warfare.

A brief enumeration of some of the more significant components of the "general labor situation" of the late 1930's and early 1940's may advantageously precede a survey of the labor problems of our economy while it is subject to these extraordinary strains and an examination of the impact of these problems upon the wage-earning class. Comparison of labor conditions and relations of very recent years with those that obtained when the United States entered the first World War, twenty-five years ago, is also in point.

The great and only recently attained power of organized labor is a first of the factors with which the war effort must reckon. In 1930, the trade-union movement included not more than 3,392,000 of the nation's gainfully employed persons; ¹ today approximately 10,000,000 wage earners and salaried workers are members of independent labor organizations. Segments of the economy seemingly immune to trade-union penetration not many years ago have found themselves adopting the collective bargaining way of industrial relations. Twenty-five years ago, on the other hand, total membership was less than in 1930, and unionism's strength was confined to a limited number of categories of employment.

This expansion of unionism and extension of collective bargaining impinges upon the war effort in a variety of ways. Labor is in a better position to resist, if it chooses to do so, policies running counter to its point of view on wages, the closed or union shop, hours and overtime penalty rates, and

other issues than it was—in spite of the rapid increase in membership then—during the last war. It can, unless restrained by public opinion or judicious leadership, ask a higher price for voluntary cooperation and for the temporary abrogation of some of its traditional objectives and methods. The problem of maintaining industrial peace during the war effort is complicated by the fact that some of the new unions, conscious of their strength and power, are not yet well disciplined, and also by the fact that many employers are inexperienced in the art of negotiation with labor. Accentuating the importance of these problems is the fact that a considerable part of the recent expansion has been in industries and trades essential to the war effort. Yet the potentialities of an organized labor movement as a constructive force in increasing physical output and in adjusting democratically the clashes and conflicts that inevitably arise in industry are tremendous. The likelihood that the new power of organized labor will be so utilized depends in no small part upon the effectiveness with which the government (through its machinery for peaceful adjustment of grievances and disputes and through its various war-policy boards, upon which labor has representation) is able to weld the trade-union movement into an actively participating partner in the great effort.

In the favorable government policy toward labor that evolved rapidly during the 1930's is to be found a second of the factors which must be taken into account in a discussion of the impact of the war upon American labor. This policy manifested itself in both the extension of direct guarantees to the lower income groups—federal and state minimum-wage legislation, unemployment insurance, insurance against old-age dependency, government assumption of the

responsibility to provide work or maintenance for those willing and able to work but unable to find the opportunity to do so in private industry—and the enlargement of the area of organized labor's permissible self-help activities; and it expressed itself in both statutory enactments and judicial decisions. As a result, the government's policy toward labor when Pearl Harbor was attacked stood out in sharp contrast to that of a decade earlier. The United States was a leading, not a laggard, nation in the fields of social legislation and social insurance, and the legal position of labor combinations was one of the most favorable, instead of one of the most restricted, among industrially advanced nations. These generally approved—and long over-due—changes in government policy have of course conditioned and colored the labor problems of the war period. The enlargement of the area of labor's permissible self-help program has important bearing upon the question of policies to be adopted to achieve industrial peace. Advances in social legislation were accepted by millions of wage earners, disillusioned of the roseate promises of the "new capitalism," as their rightful due, and they are prone to insist that the principle of equal sacrifice imposes an obligation on the community to maintain such social advances as can be maintained without hampering the major national effort.

A third of the conditions with which the war effort must reckon, implied to some extent in what has already been said, is the status enjoyed by organized labor in the nation's social fabric as a whole. In contrast to the situation twenty-five years ago, the legitimacy of labor's insistence that it be given representation and part of the decision-making power in all war matters that impinge on labor's interests is taken for granted.² When, at the outset of the last war, the Ameri-

can organized workers urged that they be given representation on war agencies, opposition was widely (although in the end unsuccessfully) voiced by employers, who feared that such representation would constitute an implied recognition of unionism; and Samuel Gompers' demand for labor representation on the board proposed for the settlement of disputes was contested by employing interests on the ground that labor had no right to representation "as such." During the years since 1917, however, both government policies and public consciousness of the inevitability of collective action in a mature economy have operated to accord it a vastly improved status. In this war, the right of organized labor "as such" to participate in the formulation of economic and other policies is not questioned.

Lack of unity within the ranks of organized labor, in contrast to the comparative unity of the federated trade unionism of 1917, is another of the significant elements in the total situation as the war program gains momentum. The rift, originally a consequence of the problem of union structure within the mass-production industries, has now continued for seven years. With the passing of time, the breach tended to widen rather than to narrow; collateral issues attached themselves to the initial one, and "raiding" of jurisdictions and mutual recriminations increased the bitterness of the "civil war." Collaboration between the two factions for furtherance of the defense effort did develop when this effort assumed significant proportions in May, 1940; and early in 1942, after the United States had become a formal participant in the war, the leaders of the two national organizations joined forces in the informal "Combined War Labor Board of the A.F. of L. and C.I.O.," convened by the President to consult with him on "all matters" concerning

labor's participation in the war. The division of the labor movement into two rival factions, each claiming part of the jurisdiction of the other, remains, however, a circumstance that is likely at any time to produce renewed dissension and work-stoppages.

Somewhat different in character from the foregoing phases of the current labor situation is the matter of the labor supply available for the war effort. What wages and hours policies are most conducive to economical and speedy mobilization of the nation's human resources, whether existing regulations should temporarily be set aside, the extent to which production of consumer goods can be maintained while production of the requisite war materials is receiving first consideration, the training and vocational rehabilitation programs that should be instituted, and the handling of "priority unemployment"—all these questions impinge, to greater or less extent, upon the labor-supply situation with which a nation attempting to win a war finds itself confronted.

Upon first glance, the problem of obtaining sufficient labor power when the United States became a participant in the second World War might appear to be markedly different from the man-power problem of twenty-five years earlier. In 1917 no appreciable reserve of labor—no great "slack" to be taken up—existed. Prior to the defense effort, on the other hand, the presence of surplus labor had been one of the outstanding problems in the United States, and our efforts had been directed toward the "spreading" of work through statutory enactments making it expensive to employ individuals more than a specified number (usually forty) of hours per week. Widespread unemployment still obtained in 1940 and 1941,³ although the volume had greatly diminished since

the depth of the depression of the 1930's. Nevertheless, it is far from unrealistic to envisage the possibility that a general labor shortage will develop in the not distant future, and of the fact that we are already faced with critical shortages in the classes of highly skilled and highly specialized labor there can be no doubt. Prior to the Japanese attack upon Pearl Harbor, absorption of our idle labor had proceeded rapidly, some 2,700,000 unemployed persons finding jobs in industrial work, while the armed forces absorbed 1,100,000 more, between April, 1940, and April, 1941; ⁴ and between December, 1940, and the corresponding month of 1941, the index of factory employment (1923-1925 average = 100) rose from 116 to 134. ⁵ This rapid increase in employment, together with the fact that some of the commonly accepted estimates of the volume of unemployment probably were overstatements, points to the conclusion that the "slack" of unemployment which can, as a practical matter, be taken up is today not great. More labor-power for the war effort can still be secured to an extent by drawing upon the reserve of unemployed persons, but for the most part reliance must be placed upon increased efficiency per man-hour and upon the working of more man-hours by each employed individual.

Finally, in this summary description of the labor setting of the early 1940's, a few additional comparisons between conditions during the first and second World Wars, with suggestion of their possible public-policy implications, may be made. The statement frequently is made that during the preceding war labor conditions were "frozen" for the duration, and the obvious moral drawn is that they should be frozen again this time. Presumably there is unanimity of opinion that the gains or special prerogatives of particular

groups must be held in abeyance, the *status quo* be maintained, when this is necessary to expedite the war program. Two considerations are, however, relevant to the argument that, as a uniform and unbending policy, labor conditions and relations should be "frozen" once more. First, conditions were not frozen twenty-five years ago until after very considerable concessions had been made to labor; and, second, we are now living in a social and economic era in which some phases of labor relations cannot be held in *status quo* without difficulties that realism demands we recognize. The 1918 War Labor Board's dictum that workers be not discriminated against because of union membership or sympathies, and its enunciation of their right to organize and bargain through representatives of their own choosing if they wished to do so, constituted concessions the magnitude of which is today obscured because the Board's policy is now incorporated into statutory law and is taken as a matter of course. At the outset twenty-five years ago, it was proposed that real wages be kept at the existent level by automatic adjustments of money rates or earnings in accordance with changes in the cost of living index; but labor secured, instead, acceptance of the principle of establishing a "living wage" prior to adjustments in accordance with changes in the cost of living. "Freezing" took place only after labor had been granted substantial concessions.

To allude to the inaccuracy of the belief that at the beginning of the last war labor conditions and labor's prerogatives were frozen just as they stood is not, of course, to imply that holding of some—possibly all—of them in *status quo* now may not be dictated in the national interest, but only to point out that there is no absolute precedent for maintenance of all labor conditions on a pre-war basis, and to sug-

gest that each change should be considered on its own merits, without any hard-and-fast rule. Moreover, some of the labor problems that were of relatively minor importance twenty-five years ago, and could—with a little pragmatic compromise here and there—be more or less avoided for the duration of the war, are today of a magnitude making avoidance less easy and in some cases perhaps less desirable. When the labor movement was still struggling for an established place and recognized status in industry, the ever-vexatious question of the closed shop, for example, did not assume its present proportions. American labor of 1917–1918 did, it is true, relinquish the right to strike for the closed shop, but this was the only substantial concession it made. Possibly it should make the same concession today, but the question needs to be approached with remembrance of the fact that the issue has become one less easily relegated to the realm of postponable problems.

The foregoing paragraphs have suggested, it is hoped, the character of the labor issues facing the nation. Closer scrutiny of some of them is, however, necessary. In the following pages, five of our major war labor problems are discussed: first, wage policies, price movements, and the workers' real income while we are financing the war; second, and inextricably interwoven with the wages question, the problem of hours of work; third, the mobilization of labor for war production purposes; fourth, the impact of war conditions upon the organized labor movement; and, fifth, government policy with reference to industrial disputes.

In the absence of compulsory checks, money wages tend to rise during a strenuous war effort. The period is one of labor shortages, lively competitive bidding on the part of

employers, payment of penalty overtime rates, and government creation of purchasing power in consequence of the fact that its expenditures exceed the sums it diverts from the income recipients of the nation. If the increasing fund of purchasing power is not matched by an increasing quantity of civilian goods—if, indeed, the total of civilian goods decreases—an upward price spiral, with all its inequalities and dangers, becomes almost inevitable.⁶ The problems of what wage policy should be adopted and what means should be resorted to for its effectuation are among the most imperative, and at the same time most difficult, of those confronting a nation at war.

European nations, since the outbreak of war in 1939, have tried directly or indirectly, as part of a general campaign against inflation, to restrain the rise in wages,⁷ and Canada has moved farther than they in the direction of wage stabilization.⁸ By the end of the first quarter of 1942, however, no “official” wage policy, supported by a certain amount of government sanction, had evolved in the United States. The possible repercussions of mounting wage rates and living costs were, it is true, being widely discussed, and in contrast to the high-wage ideology of the preceding years, public officials were giving utterance to the thesis that, from the point of view of labor, inflation is worse than a stable wage structure. There was also increasing recognition of the fact that the enforcement of price and rent controls would be rendered more difficult if advances in wages were not held in check, and warning that high wage rates in the aftermath of the war would cause labor to be an overpriced factor of production and would therefore increase the volume of unemployment. It was pointed out in addition that under conditions developing in the labor market⁹ no great

increase in output per man-hour could be counted upon to offset the cost effects of higher wages. Organized labor, on the other hand, remained opposed to any "ceiling" on wages, advancing as arguments the rising cost of living,¹⁰ its willingness to cooperate in increasing the efficiency of industry, and the expansion of profit margins in many lines of enterprise.

To many thoughtful observers, an adjustment downward of individual spending seemed essential in view of the impending reduction in the supply of consumer goods, and the dictates of this conclusion with reference to wage policy were obvious. At the same time that the excess of government expenditures over the amounts received from the people in taxes and loans was enlarging the fund of purchasing power, the various "slacks," such as idle capacity and unemployed workers, were being taken up, and the point was being approached where further expansion of war goods would necessitate contraction in the production of civilian goods. Competitive spending for scarce goods, with the inevitable inflationary consequences, seemed to be in the offing, and as a means of checking this trend, a curb upon wage increases, accompanied by more widespread government price control, was advocated.

The assumptions underlying the position that advances in money wages should be checked are realistic ones. At the same time, a policy of wage stabilization needs to be accompanied by other types of control, and needs to be applied so that the incidence falls upon those best able to bear it. Many feel that desirable policy calls for the maintenance of the real income of those in the very low wage brackets, perhaps in rough prototype of Canada's system of wage adjustment, even if the purchasing power of the earnings

of all workers declines. Likewise, the proposed system of "deferred pay" is worthy of consideration.¹¹ Under this plan, the workers would receive part of their compensation in government obligations redeemable at some future date. Immediate spending would consequently be checked, and a cushion of consumer spending during the transition to peace, when deflationary tendencies probably will be operative, would be provided. Among other means of checking the inflationary effect of a rising tide of earnings in the face of a restricted supply of consumer goods, suggested by various students of the problem, are increases in Social Security contributions, greater efforts to sell defense bonds to workers, and establishment of dismissal compensation funds invested in government securities.

One consequence of the war, both before and after the United States became a participant, has been the tendency to increase the number of hours actually worked per day and per week by the average wage earner. As was indicated earlier, the United States launched its defense effort, and even entered the conflict, with a reserve of unemployed labor. But, again as was indicated earlier, the slack in employment was not as great as some of the estimates would have led one to believe, and the problem of a general labor shortage was not as unlike the man-power problem of 1917 as it seemed to be. Already there is a dearth of important types of skilled labor. Accordingly, the necessary increase in total man-hours worked must be attained, for the most part, by a lengthening of the work week of the average employed person rather than by the employment of more persons. Two questions ensue. What is the best, or optimum, number of hours per day or per week? And, second, should the hours in excess of the prevailing standards when the United States

entered the war be compensated at penalty overtime rates, such as are provided for by the Federal Wages and Hours Act and by numerous collective agreements, or should the basic work week be lengthened?

From the point of view of productive efficiency alone, the proper, or optimum, number of hours presumably is the number that will yield maximum output throughout the war period. This optimum varies tremendously from occupation to occupation and from plant to plant, in accordance with differences in the strain and fatigue involved in the work and with the relative importance of mechanical and human factors in setting the pace. The experience of the last and of this war and the consensus of expert opinion, however, warrant the generalizations that extremely long hours are not the most productive in terms of sustained weekly output,¹² and that, on the other hand, the prevailing American standard forty-hour week is not as productive as a longer one would be.¹³ England, Germany, and other belligerent nations have experimented with extreme prolongation of hours since 1939, only to find that some adjustment downward was necessary.¹⁴ But none contemplated reduction of the basic, or standard, work week to the forty hours specified in the Fair Labor Standards Act of the United States.

If hours actually worked by the average wage earner are increased—as it is almost certain that they will be, for reasons already indicated¹⁵—the question of public policy then becomes: should present basic standards, as established by federal legislation and collective agreements, be retained, and work in excess of the standard hours be compensated at more than the basic rate of pay? ¹⁶ This is essentially a question of wage policy rather than of hours, since a national labor program based upon an affirmative answer would have

the effect of increasing the average hourly earnings of all who are working (as many will be) more than the standard number (say forty) of hours per week. Controversy over the question has been bitter. Employing interests have contended that the original purpose of the overtime penalty provisions of the Wages and Hours Act, that of spreading work, is not in point when the problem is to find labor to perform necessary services rather than to find employment for labor, and that the increase in labor cost per unit of product consequent upon working men overtime is not justifiable when the problem is to restrain the forces of inflation rather than to stimulate a more rapid flow of money. Organized labor, on the other hand, has been adamant in its position that present hours standards must remain intact. From the point of view of the war emergency, rather than from that of either organized labor or the employing interests, however, the essential issue is whether existent wage-hour arrangements tend undesirably to elevate wages, costs, and prices.

That cost-raising tendencies inhere in these arrangements is apparent. It is probable that these tendencies did not in fact increase labor costs to any appreciable extent during the early months of the United States' participation in the war,¹⁷ owing to the fact that the average actual working week exceeded only slightly the legal maximum at straight-time pay. But in view of the virtual certainty that, as the war program continues, output will be increased primarily by a lengthening of hours rather than by the employment of more persons, the cost (and therefore price) advancing effects are almost certain to manifest themselves before long. Some modification for the duration of the war of the legal wage-hour arrangements is at least within the realm of the

not improbable. It is patent that if this is done, the overtime penalty rate provisions of collective agreements should be similarly modified.

The necessity of mobilizing quickly the nation's human resources has presented problems of major difficulty. As was indicated earlier, the reserve of labor from which to draw was probably smaller when the defense program became operative than some of the estimates of the volume of unemployment indicated. Regional and industrial re-allocation of manpower had to be accomplished with as little delay as possible. Many of the unemployed lacked the technical capacities needed in important types of war work. Vocational training programs lagged during the 1930's, the skills of many workers went "rusty," and the relative demand for different types of skill shifted with the transition of the economy from a peacetime to a wartime basis. The attack of the government upon these problems has included, among other things, the institution of a national training program, assistance to industries in the initiation and direction of their own programs, coordination under the Labor Division of the Office of Production Management of the activities of other government agencies, gearing of the earlier work relief program to the war needs, and utilization of the federal employment service to direct registrants for jobs into training courses.

While efforts have been thus concentrated upon the problems of developing and allocating the labor required in the war industries, numerous displacements of employed men have resulted from the war effort. The unemployment occasioned by conversion of plants from civilian to war production may be regarded as relatively temporary in character,¹⁸ but "priority unemployment"—the consequence of

the inability of the authorities to allocate sufficient materials to non-defense activities—is likely to result in more prolonged joblessness, and in some cases, such as that of a “single-industry town,” it may impose hardship upon an entire community. The problem of the displacement caused by plant conversion and priorities during a period of war activity, when the aggregate demand for labor is great, is, however, not comparable in magnitude to that of the unemployment which may accompany the cessation of war activity.

Two aspects of the impact of the war upon American labor, somewhat different in character from those already discussed, still invite consideration: the effects upon the strength, policies, and tactics of the organized labor movement; and, second, the repercussions in government policy toward industrial disputes.

During the last war and the year and a half immediately following, trade-union membership nearly doubled. Similarities in the environmental conditions that usually determine the strength and progress of organized labor are to be found when one compares 1917 with 1942. By the former year, the labor market had changed from a “buyers’ ” to a “sellers’ ” market, and in 1942 such a situation appeared to be one of the probabilities of the not-distant future; during both wars employers were under pressure of public opinion and the government to be conciliatory in their dealings with labor and to make reasonable concessions; prices were advancing in each case and wage earners inclined to believe that expanding margins of profits enabled business enterprise to pay higher wages, and therefore disposed to organize to get them; government policy toward labor’s efforts to organize and bargain collectively was favorable in 1917,

as it is in 1942;¹⁹ the trade-union movement today, like the movement of twenty-five years ago, is the beneficiary of the fact that the cooperation of organized labor is almost indispensable in the effectuation of the war program. In spite of these similarities, however, it is highly doubtful that unionism will experience an expansion comparable to that of the last war. Then, it had not just enjoyed a remarkable growth like that of the second half of the 1930's, and immediate organizational opportunities were consequently less limited relative to its coverage at the outset. In the second place, the trade-union growth of a generation ago occurred in considerable part in branches of industry essential to war production, and by the 1940's these segments of industry were already fairly well organized. Still a third reason for not expecting an advance like that of the preceding war is the fact that the gains then were imputable in large part to the concessions to unionism embodied in government policies. Today the concessions of 1917-1918 are a firmly entrenched part of public policy, full advantage of which has been taken in the last six or seven years; it is difficult to imagine the granting of comparable concessions now, or, indeed, what the character of such comparable concessions might be.

While there is little likelihood that the strength unionism has already attained will be undermined or the coverage of workers by collective agreements lessened during the present war, there is considerable likelihood that both public opinion and developments in public policy will force modification in the policies and tactics of some of the unions. Recognition of the dangers of a price-wage inflation, a matter already discussed, may render less sympathetic the hearing that labor's high-wage ideology receives. Public dis-

position to impose greater responsibility—financial or other—upon labor organizations and greater restriction upon the methods they employ may become stronger and more effective. Unwillingness to make reasonable compromises, absence of enough discipline within labor organizations to insure observance of the provisions of collective agreements, jurisdictional disputes impeding production, and reluctance to submit disputes to arbitration will all strengthen the demand for the imposition of government restrictions.

Labor's collaboration in increasing production is, of course, of prime importance to the war effort. Both the American Federation of Labor and the Congress of Industrial Organizations have given official utterance to their intention to aid in the achievement of the end, and each has advanced specific suggestions for implementing the procedures of collaboration. From the Federation has come a proposal for creation of separate labor and industry advisory boards, outside the general defense structure, to cooperate with government agencies and present the labor point of view in regard to specific issues that may arise. As an application of its own suggestions, the Federation in the summer of 1941 established a National Defense Committee, an organization that has concerned itself particularly with problems arising from the imposition of priorities and with methods of defense training, and it shortly thereafter called upon its city central organizations throughout the country to establish local labor defense committees. Proposals of the Congress of Industrial Organizations have been more far-reaching. In a memorandum submitted to the President in March, 1941, the C.I.O. advocated the establishment of "defense industry councils" composed of an equal number of representatives of labor and management and a repre-

sentative of the government, which would be responsible for the management of each of the defense industries.²⁰ A general coordinating and policy-making board to integrate the work of the individual councils was also suggested. In essence, this proposal was a revival and enlargement of the British "Whitley Council" idea of the first World War.

Elaborate plans for worker-management collaboration in solving production problems in the war industries have not, however, caused some of the unions—particularly the craft and compound-craft organizations, possessed of a narrow but very substantial job interest—to be any less concerned about those revered protectors of job opportunity, the working rules. Opposition to the "dilution" of labor forces trained under the traditional apprenticeship system by more quickly trained workers and to wage incentive plans was manifested by some organizations throughout the period of the defense effort, and a few of the unions charged large fees for temporary working permits on closed-shop jobs. The problem of union working rules is a complicated, and often a rather technical, one; in the majority of cases these rules have emerged out of specific conditions that seemed to threaten the job security of the workers. Unionists on the whole, however, have been receptive in recent months to the appeal that peacetime emphasis upon some of their policies be lessened to further the national effort, and concessions on their part are rendered easier by the fact that the demand for labor created by war production makes job-security measures less necessary.

Industrial disputes normally increase in number during a period of rapid acceleration of business activity, owing to the rise in prices and the lively demand for labor; and special factors, such as the rivalry of the two union factions

and the ability of the new labor organizations formed in the 1930's to press their demand for the closed shop, were operative in the United States during the period of the defense effort.

In spite of these factors, the number of disputes has not been great during the defense and war periods,²¹ and the man-days lost in consequence of them have been only a fraction of one per cent of all man-days of work available.²² But the number of strikes and comparisons of the man-days lost with the number of available or utilized man-days fail to suggest the extent to which industrial disputes may impede war production. Indirect effects, such as the man-days lost as a result of strikes by others than the strikers themselves and the effects on the efficiency and morale of workers not on strike, generally ensue, and war production may be very adversely affected by a comparatively small number of strikes at strategic points in war-goods industries. A public opinion unfavorable to labor is engendered.

Demands for legislation drastically curbing labor's right to strike have been frequent during the last two years, but administration emphasis has been placed upon the implementing of peaceful adjustment of disputes. The Labor Division of the National Defense Advisory Board has induced employers in building construction, ship building, and other industries to enter into "stabilization agreements" that include the "no strike or lockout" clause and the National Defense Mediation Board, appointed by Executive Order in March, 1941, made an important contribution to industrial peace. The activities of this agency were drastically curtailed when, following its decision in the captive mine closed-shop dispute of November, 1941, the member representatives of the Congress of Industrial Organizations

resigned and the majority of C.I.O. unions refused to submit their cases to it.

Uninterrupted production became more imperative after the United States entered the war, and on December 17, 1941, the President, again attempting to encourage voluntary arbitration and agreement by the parties to industry in preference to stringent legislation, summoned a conference of labor, employer, and government representatives to formulate ways and means of eliminating strikes and lock-outs in defense industries. The Conference agreed that "there shall be no strikes or lockouts" and that all disputes should be settled by peaceful means, and recommended the establishment by the President of the War Labor Board, which he created by Executive Order on January 12, 1942.²³ Upon the controversial question of whether disputes over establishment of the union shop should be subject to the same consideration as those over wages and other matters, the Conference failed to agree. By implication of the President's letter accepting the recommendations, however, these disputes were included among those to be settled by the new Board.

Difficulties confronting the recently established machinery for the maintenance of industrial peace are enormous. The War Labor Board is provided with no canons or principles to guide its decisions, nor has it ultimate power to enforce them. Many employers are unalterably opposed to changes in union status (i.e., to the institution of the union or closed shop where it does not already obtain) during the war, and the Board's success or failure in the handling of this issue will probably be the chief determinant of whether it survives. A sharp rise in the cost of living would increase greatly the number of wage disputes demanding settlement.

Should these difficulties prove too great, and strikes and lockouts become prevalent in spite of the Board's efforts to avert them, Congress almost certainly will be disposed to legislate the policies to govern labor relations in war-production industries. Democratic tradition favors our present approach to the problem. The obligation upon organized labor and organized industry to compose their difficulties on a mutual and voluntary basis, and thus to contribute to the success of the more democratic way of solving industrial relations problems, is an obligation of first magnitude.

THE UNITED STATES AND THE BRITISH EMPIRE: PAST AND PRESENT

C. W. DE KIEWIET



AMERICA has become the ally of the British Empire in a struggle in which the stakes are the existence of the British Empire and the power of America even in her own hemisphere. In no war in modern history have two allies so unreservedly pledged to one another the full measure of their wealth, their resources, and their physical power. In Washington and the capitals of the Empire American and imperial boards and commissions are, in a manner of speaking, the administration of a wartime community in which the United States and the British Empire are part of one another.

This intimate association raises a number of questions. How does the present alliance fit in the total picture of American relations with the British Empire? What is the nature of the British Empire with which the destiny of the United States is mortally involved? He who seeks to give an answer to this latter question is in much the same position

as the jurists of the seventeenth century who struggled to find a simple and accurate definition for another Empire just as perplexing to its observers, namely, the Holy Roman Empire. Nobody reached a definition which pleased anybody else. The one which is most often quoted reveals more of the exasperation of the author than of the nature of the Holy Roman Empire. Samuel von Pufendorf found that it was not a monarchy, not an aristocracy, not a democracy, nor any combination of these three. It was, he said, "a shapeless sort of a body. . . ." ¹ In 1926 the Committee on Inter-Imperial Relations of the Imperial Conference said exactly the same thing about the modern British Empire, although not as crisply and with less humor. It explained that the British Empire "considered as a whole, defies classification and bears no resemblance to any other political organization which now exists or has ever yet been tried."

There is no race which is not found amongst the people of the British Empire, nor any religion which is not practised somewhere by British subjects. Its cultures range from the nomadic and primitive bushmen of South Africa to the higher caste groups of India. Its governmental systems range between the extremes of autocracy and democracy. Some of its political forms have seen no essential change since the eighteenth century; others have been continuously responsive to each modern pressure. Its opponents, in detailing its sins, may begin with the story of the Acadians, and go on to the Middle Passage, the American colonists, India under Warren Hastings, the Dutch in South Africa, and the Irish in Ireland. Its supporters are not embarrassed, for theirs is the story of Burke's speeches, of the extension of political liberty to the four corners of the world, the emancipation of slaves, the restoration of South Africa to dignity and auton-

omy, and the gift of a hundred years of history without a world war.

These sets of contrasts could be extended indefinitely, and serve only as a warning that the British Empire yields to no simple formula. Yet it has been victimized both by uncritical loyalties and uncritical dislikes. In the generation before the present war a great deal of American thought had been converted to an over-simplified view of an Empire exploited by capitalistic finance in the interests of a highly organized and selfish metropolis. In the period after the peace of Versailles there was a marked reaction against imperialism in America. The post-war generation of school and college text-books cited imperialism as the major cause of the first World War. Not unnaturally attention was directed to the baser aspects of imperialism, to its selfish ambitions and its less creditable undertakings.

A distrust of imperialism in general and of British imperialism in particular was in accordance with a larger American tradition that went back to the eighteenth century. Every well-grounded study of British-American relations must begin with the American War of Independence, and with the tradition of hostility to Great Britain to which the war gave rise in the popular mind. The popular mind writes its own history, often in defiance of the trained historians, and what the people as a whole believe to be true influences national policy. In spite of other wars it is the War of Independence which has remained through more than one and a half centuries the central occurrence of American history. Nothing could displace the first of the nation's wars in the total picture of American life. That the War of Independence looms as largely as it does in the American people's concept of their history is readily understood. It gave birth to the

nation, and it was the country's only revolution. An independence won through the tame processes of political debate and negotiation cannot be easily glorified in songs, or novels, or orations, or parades. But a war of liberation becomes a focus of sentimental and patriotic feeling. This circumstance gave an equal prominence to the enemy of that war—Great Britain. A tradition of a single national enemy is unusual in the history of the nations of the Western World. There is, for example, in French history no similar single focal point for national patriotism. The English, the Spanish, the Austrians, and the Germans have all had their turn as the traditional enemies of the French nation. The French school-boy who blacked the eye of an English playmate because the English had burned Joan of Arc at the stake in 1431 would, unlike Mayor William Hale Thompson of Chicago, have been no less patriotic had he picked his quarrel with a Spaniard or a German.

The natural "high-lighting" of the birth years of the United States was intensified by the need of nineteenth century America to give an American faith and loyalty to masses of foreign immigrants and their children, to teach Ellis Island about Plymouth Rock and Valley Forge. The story of the Revolution was a superb aid in the patriotic instruction of the district schools.² Not all of the scorn of precise modern historians for popular patriotic writers like Parson Weems is justified. Weems was admittedly an inaccurate historian, or no historian at all. But he and his sort were a pillar of patriotic education. Germans who fled political persecution, Italians who escaped from economic misery, and the great majority of those who turned their backs gladly on Europe and their faces hopefully towards America, were receptive to the facts and the legends of American history.

"Kings," said Huck Finn, "is all rascallions." From Parson Weems to Huck Finn, and from Huck Finn to Hyman Kaplan, there is a continuous thread of patriotic education.

The War of 1812, and popular interpretation of the war, confirmed the bias against Great Britain. Polk found "Fifty-four forty or fight" an excellent campaign cry in 1844. The Civil War with its ugly surges of temper deepened the feeling that Great Britain was the abiding menace to the security and the integrity of the United States. The Irish question gave a bitterness altogether its own to American sentiment. In the platforms of both the Republican and Democratic parties in 1868, 1876, 1884, and 1892 there were references to the Irish question.³ President Cleveland's belligerent message during the dispute with Great Britain in 1895 over the Venezuelan boundary revealed once more the force of anti-British sentiment that still existed towards the end of the century.

Mr. James Truslow Adams has expressed the opinion that the turning point in British-American relations came in 1898 when British support during the Spanish-American War was both practical and wholehearted. The literature of Anglo-American *rapprochement* at this time is very full and some of it very enthusiastic. The *Atlantic Monthly* for July, 1898, for example, printed an article by James Bryce on "The Essential Unity of Britain and America," and in October an article by Carl Schurz on "The Anglo-American Friendship," although neither of these authors put their hearts into their words nearly as much as the *Toronto Globe* after Dewey's victory at Manila. "It's in the blood; Britannia and Columbia rule the waves; we rather think now that the United States is an Anglo-Saxon nation."⁴

By 1914 the feeling of rivalry with Great Britain had

sensibly diminished. It revived again after 1918, partly in a revulsion of American opinion against imperialism, and partly in a belief that competition for oil, for world trade, and for maritime supremacy made Great Britain once again the most serious international rival of the United States. "War between America and Britain," declared one widely read author, "is more probable than war between America and any other Power." ⁵ Similar prophesies were made by the Frenchman Henri de Jouvenel in 1927, and by War Commissar Voroshilov and General Ludendorff in 1929.

Then came Hitler. The revolution in international affairs which he brought caused new adjustments in the American attitude towards Great Britain and the British Empire. Up the steps of Abyssinia, Spain, Austria, Czechoslovakia, Poland, Norway, Holland, Belgium, and France, American judgment climbed slowly to the recognition that a new imperialism had arisen, unmatched in aggressiveness, and armed with a ruthlessness that by contrast reduced the harshest moments of British imperialism to mildness. In Germany stood revealed an economic and military imperialism which publicized its blueprints for entire continents. In the face of such occurrences the British Empire became a more sympathetic phenomenon in American eyes. Spontaneously there began a re-examination of its history and of its assumptions. The emphasis in the neo-imperialism of German geopoliticians and army commanders upon power and compulsion threw into relief the opposite qualities in the system of the British Empire of free consent and of willing co-operation.

It was plainer than it ever could have been before how little the British Empire was organized on a military basis. It had had its wars, but they had never been steps in a pro-

gram. Most of them were confined to the protection of vested interests, or were intended to prevent serious stoppages in the flow of commerce and the activity of investment capital. Nor was it ever organized by an elaborate apparatus of managerial and military officials, engaged in the task of transmuting its wealth and resources into military authority. There is a striking characteristic that is often overlooked of the world in which the British Empire and the United States grew up together. Although Great Britain had led the industrial revolution during a hundred years of its history, piling invention upon invention, it had remained singularly uninventive and unenterprising in one direction. The period during which Great Britain was the leader of technological change saw remarkably few first rate military innovations or inventions. It is true that the application of steel and steam to shipping gave the British navy a new lease on supremacy at a critical moment in its history. It is true that the application of steel and steam to land communications helped to give the North the victory over the South in the Civil War. But neither in Great Britain nor in America was there in the period of their industrial ascendancy any effort to gear science and technology deliberately to a revolutionary military machine.

From the essentially non-military character of the British Empire flowed a number of benefits. The international bankers and exporters which were its leading types were interested in the movement of goods and in security of investment.⁶ They were moved, however selfishly, by a desire for stability and peace. To their success the nineteenth century owed its magnificent opportunity to carry out its technological revolution in relative peace. In the measure that the

entire American achievement of settling its great territories depended upon the free movement of men and women, capital and goods, the peace of the nineteenth century was of incalculable benefit to American development.

It has already been explained that the British Empire is not a single or uniform political institution. Actually it is three Empires, or more accurately, two Empires and a Commonwealth of Nations. The first Empire, sometimes called the dependent Empire, consists of the territories in which the chief constitutional power is held by the government in Great Britain itself. Its units range from a military post like Gibraltar to a populous area like British Nigeria. This is the Empire of force which corresponds most closely to the popular idea of an empire of backward peoples engaged in producing raw materials for the industries of the metropolis. India is an Empire by itself. It does not belong to the dependent Empire because its economic and political institutions are much more mature. Nor does it belong to the third Empire or the Commonwealth of Nations. Without any control over foreign policy, and with no effective control over internal finance, India lies between the dependent Empire of force and the independent Empire of consent.

It is of the independent Empire of consent that there is often the greatest misunderstanding. It is still possible, even in academic audiences, to encounter the belief that all of the Empire without exception is ruled directly by Great Britain. Serious misunderstanding of the nature of the Commonwealth of Nations can also be found in the records of the American Senate. Some years ago, during a debate on the war debts, it was seriously proposed that Great Britain could pay off her indebtedness by transferring Canada to the

United States. The truth, of course, is that Great Britain had no more right to transfer Canada to the United States than the United States had to transfer Paraguay to Brazil.⁷

In its classical and general sense Empire means the entire subjection of large areas and their peoples to a single central authority. If we accept this definition of empire, then Canada, Australia, New Zealand, South Africa, and the Irish Free State are not part of an Empire at all. For over a hundred years Great Britain has been progressively loosening its political bonds over them, yielding such economic and political freedom to Canada and the other great colonies of settlement that they have today the mature status of independent nations. A few illustrations will make this clear. When Great Britain declared war on Germany in September, 1939, Canada and the other Dominions were not automatically at war with Germany. Canada, Australia, and New Zealand declared war independently and on their own account. When South Africa declared war she even qualified her declaration by stating that her belligerency would be active only within the continent of Africa. The Irish Free State used its right not to declare war at all, but to remain neutral.

In the British Commonwealth of Nations and the two Americas are to be found all the communities which have succeeded in converting small struggling colonial settlements into organized modern states. Together the United States and the Dominions have received the overwhelming majority of the peoples who in the course of the past three centuries have left Europe seeking new opportunities. That all of these societies obtained their populations mainly from ordinary people bred in each a distrust of hereditary class distinctions and, more significantly, the deep respect for the common man which has so profoundly marked their eco-

nomic and social history. In any study of the relations between the United States and the British Empire these circumstances are full of meaning.

In so many ways were the British colonies and the United States connected and similar. Though some of the similarities were superficial, others revealed an important kinship. The experimental and inventive temper of pioneer communities was common to them all, and so was the tendency to make worldly goods the chief standard of success. In the good phrase of John Locke they maintained that "the handsome conveniences of life are better than nasty penury." The Australian was as profligate as the American in the hasty and grasping exploitation of nature's resources. Gaunt cemeteries of ring-barked trees in Australia and the ravaged forests of Michigan and Minnesota are the result, in each case, of the intemperate pursuit of material wealth which left later generations to struggle with the problems of reafforestation and conservation. There is no essential economic or social difference between the factors which produced the dustbowls of South Africa, Australia, Canada, or the United States. They all enjoy the expensive sunsets caused by the sifting down of topsoil through the evening atmosphere. They all had, and still have, the same habit of worshipping excessively at the altars of their founding fathers.

The expansion which produced American settlement, and the expansion which produced the British colonies of the nineteenth century, were mainly efforts of society and not of the state. The initiative and enterprise of individuals were more important than the sponsorship of the State. From this fact developed one of the most meaningful common attributes of the British Commonwealth and the United

States. Both bred the identical idea that political power was a trust for the people. There was the same insistence upon what was elsewhere still a radical formula—one vote, one man, one value. The American campaign cry of 1848—free men, free speech, and free soil—had a familiar ring in all the British colonies. Indeed, the most convinced application of the idea that political power was a trust for the people is not found in America, but in Australia and New Zealand. Visiting Australians and New Zealanders are apt to smile a little patronisingly upon some of the social legislation of the last ten years in the United States. Both their countries were a full generation ahead in creating machinery for regulating industrial disputes and in devising measures for safeguarding the welfare of the common man in modern industrial society. The declaration of Mr. Justice Higgins, that the “primary test in ascertaining the minimum wage that would be treated as ‘fair and reasonable’ in the case of unskilled labourers” must be “the normal needs of the average employee regarded as a human being living in a civilised community,” has a contemporary ring in American ears, yet Mr. Justice Higgins spoke as long ago as 1907.

The world-wide economic structure of the British Empire bore, and still bears, important resemblances to the large scale domestic economic structure of the United States. America had an expanding domestic market; Great Britain and the Empire had an expanding world market. Each experienced an unparalleled increase in production and population. In each area a lengthy period of economic prosperity was the favorable ally of a liberal political development. Freedom from notable and unrelieved economic distress went far to explain the political optimism and liberalism of the United States and the Dominions. In the United States

prosperity helped to ease the initiation of large numbers of foreign born immigrants to American political assumptions and practice. It is probably true that economic prosperity played as important a part as formal education in leading the new elements in the population to accept as agreeably as they did the basic philosophy of American political life. In the British Empire prosperity was also the potent ally of liberal policies. Profitable economic relationships softened the asperities of many conflicts between the imperial and colonial governments. If the economic and political careers of the United States, Great Britain, Canada, Australia, New Zealand, and South Africa were not in harmony with one another, at least they were in harmony with the basic postulates of liberal democracy such as *laissez faire*, the rights of individual initiative, and the doctrine of salvation by an enlightened public opinion.

No student has yet studied in its fullness the reciprocal influence of British and American thought and practice. Yet the influence of one upon the other has been exceptionally great. "In the whole range of our differences of opinion," comments Professor A. F. Pollard, "whether on matters like blockade, freedom of the seas, right of search, continuous voyage, the limit of territorial waters, or on problems like union and secession, the treatment of native races, the government of dependencies, there is hardly a British precedent to which America has not appealed, or an American principle which Great Britain has not invoked." The ideas and practice of representative government, of political liberty, of the rule of common law and of international morality are woven with equal authority into the lives and habits of Americans and the self-governing peoples of the British Empire.

Until the rise of Hitler and his challenge of the British Empire and the United States the dominant principles of international morality were British and American in their origin. They were sustained and given authority by the power and the prestige of Great Britain and America in the modern world. Although the idiom of international morality was accepted and acted upon by other powers, the world order which it sanctioned was primarily favorable to the English speaking world. This is a truth which has been more readily discerned by other than American and British observers. In the eyes of Bismarck "the inherited and permanent fact that North America speaks English" was one of the cardinal facts of modern history. As early as 1890 continental Europeans had begun to use the term "Anglo-Saxon" to designate the interwoven and congruous quality of most British and American thought on international questions. It will not escape the keen observer that the Eight Points of the Atlantic Charter of August, 1941, and the Fourteen Points of President Wilson stress the same principles of national self-determination, of freedom of commercial intercourse, and of social justice which had been the traditional basis of the British and American liberal outlook before 1914. When Hitler declared on January 31, 1940, that "This is a social war between nations in which the have-nots are fighting the haves for a new division of the world," he was, in fact, declaring war upon the interests and the assumptions which had been sponsored in international affairs by the United States as well as Great Britain and the British Empire.⁸

From 1815 to 1914, for a period of just one hundred years, the United States and the British Empire benefited from an international order in which each had the privilege

of being free to advance its frontiers, and to develop its political and social institutions without fear of attack from outside enemies. In all the great areas of overseas settlement the task of opening up the wilderness and equipping it with the amenities of modern civilization was made easier and more rapid because each community could devote its energies and its resources to the arts of peace—to improving the breed of sheep in Australia, to opening up gold and diamond mines in South Africa, to clearing the forest and settling the prairie in Canada. This privilege the United States and the British colonies owed in part to the preoccupation of Europe with its own affairs. They owed it also to the British navy and the balance of power which the British navy helped to maintain.

From a strategic point of view the United States remained bound up with the British Empire in spite of political independence. The security from foreign attack which the United States enjoyed all through the period of national consolidation relieved the country from the burden of heavy defense expenditures at a time when capital was needed for railways, farms, and new industrial enterprises. Neither in the United States nor in the British Empire was there any temptation or necessity to develop military groups or military interests capable of modifying political institutions, or of affecting the vigor and the rate of settlement. If it is true that emigration, especially to the United States, was deeply influenced by the non-military character of American life, then it must follow that a country which was compelled to place notable military burdens on its citizens would have been less attractive as a field for immigration.

That the British navy and British international policy stood in such a favorable relationship to American interests

can be explained realistically enough. The British decision not to undertake any further expansion in the New World after 1815, and the decision not to profit territorially from the breakdown of the Spanish Empire, were taken in a spirit of national self-interest. The exclusion of European powers from the New World was good business. The Monroe Doctrine was a declaration by an American president, yet it expressed a British as well as an American interest. Of this congruity of interest President Monroe was well aware. When he was meditating the most beneficial relations between America and Europe, he turned to ex-President Madison for advice. Madison showed that he understood realistically what was the most advantageous policy for America. To President Monroe he replied that "with the British power and navy combined with our own, we have nothing to fear from the rest of the world; and in the great struggle of the epoch between liberty and despotism, we owe it to ourselves to sustain the former, in this hemisphere at least."

For a hundred years after 1815 Great Britain was able to maintain the balance of power. Then she failed. The outbreak in 1914 of the first general European war in a century was the proof that Great Britain was no longer able to play her traditional rôle in international affairs. For a hundred years that traditional rôle had been, not to prevent any war at all, but to prevent a general war that cut across all the lanes of world trade and involved the economic resources of all the major nations. For a century technology had favored the British navy. Now technology had produced in the submarine an instrument that could challenge British control of the seas. Gone as a result was the security of America and the entire colonial world from foreign attack.

These facts are in the first rank as explanations of America's entry into the first World War. The cardinal interest compelling American intervention in 1917 was the recognition, speedily buried beneath the sentimentalities of America's own war propaganda, that the international and strategic arrangements which had been so immensely favorable to the United States would be destroyed by a German victory. After 1918 historians accumulated a large mass of evidence to prove the influence of Allied propaganda upon American opinion. Popularly much of the blame for American intervention was laid at the door of bankers, army contractors, and munitions makers. In consequence a great body of secondary explanation buried the truth that American intervention was fundamentally in response to a vital interest. Because security was a habit of one hundred and fifty years it was difficult for public opinion to grasp how much that security was at stake, and how nearly it had been lost.

A second World War and a second involvement by a reluctant America throws back a revealing light on the decision of 1917. The history of Europe and of the world between 1918 and 1939 is the history of a second collapse of the balance of power, of a second failure by Great Britain to prevent a world war, of a second failure by Great Britain and her associates to prevent or forestall the development of new instruments of warfare capable of challenging her insularity and her navy. That Great Britain failed once again to prevent the outbreak of a general war was due in no small measure to America's refusal to carry out the logic of her own intervention. After 1918 America attempted to re-establish the relationship with Europe that had been so comfortable during the nineteenth century. The refusal of the United States to join the League of Nations and to as-

sume a first-line position in the affairs of the post-war world threw upon Great Britain and France once again the responsibility of maintaining an international system which they had once already failed to maintain.

It is painfully clear now how every item of damage to Great Britain's power, and every diminution of Great Britain's strategic advantages in the two decades after Versailles, also exposed the vulnerable anatomy of the United States. British policy in the Manchurian crisis, during the Italian seizure of Abyssinia, towards Axis intervention in the Spanish Civil War, towards the Austrian *Anschluss* and the seizure of Czechoslovakia, not merely caused Great Britain's enemies to grow bolder, but opened widening breaches in the American system of defense. Sooner or later a weakening British Empire would confront the United States with the choice between once again becoming the ally of the Empire, or of standing alone in a world antagonistic to American economic and political principles, and possessed of the means of thwarting the natural and traditional movement of American interests.

In 1939 the balance of power collapsed more resoundingly and completely than it had done in 1914. To the insularity of Great Britain and to the British navy there were opposed new and vastly more effective instruments of offense than the mines and the submarines of the first World War. This time American opinion steeled itself against Allied propaganda and curbed the powers of its bankers. It was in vain. The danger did not lie in that direction. It came from Oslo, Trondjhem, Bergen, Dunkirk, and Brest. As soon as it became manifest that the Atlantic Ocean was in danger of falling into German hands, American participation was in-

evitable. A considerable part of the support for the Johnson Act and the subsequent neutrality legislation had been predicated on the implicit assumption that Great Britain and her allies would win any war that might break out. When that assumption was shown to be false, revision of the Johnson Act and of neutrality was inescapable. Americans could no longer be blind to the revolution that had taken place in their strategic place in the world. The British mantle had fallen on American shoulders, and had fallen there because this war was not after all a war between European imperialisms but a comprehensive world revolution from which no country could hope to be free. In a world in which distances were swiftly shrinking the Atlantic Ocean had taken the place of the English Channel, and America had become the island that England had been, secure, or at least relatively secure, against crippling attacks. The great advantage which Great Britain had enjoyed to build and equip its fleets without fear of destructive attack passed to the United States. For that reason the United States became the focal point of the defensive system of the British Empire. This was true while the British Empire was under attack from one continent. It became doubly and desperately true when the British Empire was attacked from Asia as well by the entry of Japan into the war. After Pearl Harbor only ignorance and folly could still be blind to the identity of military interest between the United States and the British Empire. The American acquisition of naval and air bases in British possessions in the western hemisphere had already merged the defensive systems of the United States and the Empire at those points. Now American dockyards and British naval stations, American factories and imperial troops, American troops

and imperial territories became involved in a single world-wide effort. For the duration of the war there has arisen a relationship in which the weakness of the one is the weakness of the other, and the strength of the one is the strength of the other.

There is already an important literature on the question whether American cooperation with the British Empire is temporary, or whether it can be made the foundation for a more intimate and enduring relationship in the future. Such questions are not new. The list of those in the United States and in Great Britain who have advocated some form or other of permanent bond is long. It was a man famous in this University, Goldwin Smith, who long ago suggested a common citizenship. In the first World War men of enthusiasm hoped that the machinery of wartime cooperation could be built into the constitution of a British-American federation of self-governing nations. When the war came to an end the entire machinery of purchasing commissions, shipping pools, and interlocking military commands fell apart, and the talk of American federation with the Empire ceased.

In the present war the extent of the machinery of American and imperial cooperation has gone far beyond the highest peak reached during the first World War. After the lumbering and short-sighted activities of early purchasing commissions in Washington, there has taken place a systematic organization of American and imperial trade. The task of organizing trade on a world-wide basis has become largely an American responsibility. Lease-lend has broken through the restraints of tariffs, quotas, and embargoes. America stands at the head of the most spectacular form of free trade in modern history. After the war an endowment by several

of the great national research foundations will be necessary to study with any fullness the interlocking committees of Washington, London, Ottawa, Pretoria, Wellington, and Canberra.

Strong pleas have been made that this machinery be maintained after the war and that a policy of close and durable understanding between the United States and the British Empire be followed. Mr. Clarence Streit has made the best known of a number of suggestions for the political union of the English speaking peoples. It is pointed out that such a union is possible because of a common language, because of a remarkable coincidence of strategic interests, and because Great Britain and the Dominions are convinced democracies with the same political faith. Their association would form a new world power doubly strong. Their command over essential materials could not be challenged by any other great power. No other power would command such a network of military and naval positions on land or sea. No other organization would so well meet the requirements of the German geopoliticians themselves, that the empires of the future must be empires of great spaces, of big and integral land masses. Indeed the British Empire and America would go beyond these requirements, being continental and maritime at the same time. A new and more resolute dedication to democracy, it is further pointed out, would give them the moral authority to fashion harmonious relations with the rest of the world. Independent nationality as a principle of world organization has proved itself to be a disastrous failure. Union with Britain is the way of the future. The revolution in transportation and communication has created conditions entirely favorable to the closest cooperation, for

the farthest parts of the Empire are now closer to Washington than were many parts of the Thirteen Colonies when Washington was first founded.

The list of characteristic arguments in favor of a political union between the United States and the British Empire could easily be made longer. The force of some of the arguments cannot lightly be denied. At certain points there is a pronounced harmony of purpose and tradition. It seems clear that the American acquisition of naval bases in British possessions has created a permanent strategic relationship, and one that is likely to be extended. Unless America shrinks once more, possibly as the result of defeat, into a narrow isolationism, her world position peremptorily demands the support of a well connected network of bases which the British Empire is best in a position to supply. It is also clear that both the United States and the British Empire will be compelled to plan their domestic and international affairs after the war is over. Both societies have already been compelled to abandon the habit of throwing upon their financial strength burdens which in poorer countries had to be borne by management, economy, and provident preparation. The smiling admission by editors and statesmen that Great Britain always muddled through was simply the admission that Great Britain used its economic resources to make good the disasters that neglect and want of foresight caused. Equally do the accounts of the Civil War and of American participation in the first and second world wars reveal a society which has habitually bought its way out of disaster and unpreparedness. The story has not yet been told of the extent to which money has been and is still being substituted for statesmanship in the domestic and international affairs of the British Empire and the United States. Money has been a lubricant

in time of peace and a short cut in time of war. The world has seen the spectacle of nations creating strength out of their poverty. It may yet behold the paradox of nations defeated by their own wealth. Modern war and modern peace need the support of statesmanship based upon planning. Two conjoined powers like the United States and the British Empire, chastened and made wise, would find much to plan in a world which they made their responsibility.

If American influence could hasten the solution of what we loosely call the problem of India the reward would be great indeed. The modern world knows few needs greater than the peaceful induction of India into a state of political maturity, unmarred by the hatreds and passions which the violent achievement of independence produced in so many of the nations formed in the nineteenth and the twentieth centuries. The world could not afford to see the tragedy of Ireland become the tragedy of India. Ireland is immobilized by its magnified memories of wrong and injustice. It is the prisoner of its past. In the midst of a world that has witnessed the disasters of Warsaw, Rotterdam, Belgrade, and Athens, the Irish Free State clasps its rancor and its independence to its bosom, moaning over the seventeenth century, the Hungry Forties, and the Black and Tan. If it so happened that the Indian Mutiny and Amritsar played the same stifling part in Indian life, the world would be denied the most important gift that Indian independence could make. India is like China. The entry of each into the world of the future must be one that imposes no restraint upon the full creative powers of either people. In hopes of this sort lie the highest types of war aim.

It can be admitted, then, that some closer union of the British Empire and the United States is a possible war aim.

But is it the best or the wisest of aims? A union which would engage to open its frontiers so as to permit the inclusion of other groups and territories might have the makings of a genuine world order. Without the United States and the British Empire there can be no world order. Any exclusive union, any Anglo-Saxon Empire based upon commercial monopoly and military power dedicated to the maintenance of a particular *status quo*, could not fail to be offensive to other powers or groups of powers. Although it can be argued that half a loaf is better than no bread, and that fifty years of peace under British-American world control would be better than no peace at all, sooner or later the challenge would come. American and British statesmanship must accept the revolutionary character of the war. It may not be an exaggeration to say that the changes wrought by the Reformation and by the French Revolution added together will not equal the changes which will flow forth from the present war. Great concessions must be made to the harsh truth that a world containing a great Russian state, a reinvigorated China, and possibly an autonomous India will not be likely to accept an international morality geared to British and American interests. Defeat and initial failure have in all likelihood permanently lowered British and American prestige in Asia. That the conventional relationship of white and colored races will be restored cannot be assumed, for the status and the stature of the white colonial powers has been inexorably lowered.⁹

These objections, which are all vital, say nothing of the enormous obstacles of an emotional, economic, and constitutional nature which confront *Union Now* and its related ideas. What would American wheat growers say of the inclusion in their economic system of Canadian wheat grow-

ers? What would Canada and Australia say if their splendid industrial development of the present war were exposed to the competition of American mass production? Would a modern American Secretary of State be any better off than was John Hay in 1900 in getting American politicians ever to see that British-American relations could be objectively handled? Can the American public learn, even as a result of this war, that foreign policy must, least of a nation's interests, be the sport of sectional interests?

Yet any war aim has one exceedingly important merit. One of the clearest lessons of history is that when a nation becomes involved in war its vision becomes both narrower and shorter. The present urgency of arming and fighting becomes so insistent that men cannot easily raise their eyes to the future. Two passions dominate the mind of a nation involved in modern warfare. The first is to make itself stronger than its enemies so that they may be beaten down. The second is to be released from effort and privation by peace. Between these two passions hopes and ideals for the future are quickly lost from view. A peace, like that of 1919, can easily become a counter-revolution against the very aims for which a war is fought. If it is true that the strategy of war is inseparable from the strategy of peace then it is also true that the grim struggle of today is justified only if men are able and willing to shape its consequences.

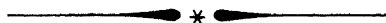
America is in the dock before the immense tribunal of total war. In the longer perspective which the historian claims, war renders its verdict upon more than strength or courage or endurance. Every war contains a judgment also of the history of the nations which fight it. War, like revolution, lays bare the anatomy of a country which peace keeps covered up. The second World War has revealed an "in-

achievement" in American life. It is not a failure, but something which has not yet been done, which has still to come to pass. Till it comes to pass America will more easily win a war than profit by her victory. America in her career has conducted two revolutions but has not joined them. In the eighteenth century she conducted a revolution in political things; in the nineteenth and twentieth centuries she conducted a revolution in material and mechanical things. But it cannot be said that the purposes declared by the political revolution can adequately command the wealth and the strength of the material and mechanical revolution. This defect makes America like a being whose life in the flesh is somehow separate from its life in the spirit, or a being in which the body can make larger demands of the soul than the soul can of the body.

There can be no doubt that towards war America will display audacity, invention, purpose, and imagination. But this will not be enough if towards peace America displays timidity, inertia, indifference, and obtuseness. War ceases to be merely war as soon as we can contemplate it with a mind holding the image of a peace which is not the end of a period of destruction but the beginning of a period of construction.

A REAPPRAISAL OF THE FAR EASTERN POLICY OF THE UNITED STATES

KNIGHT BIGGERSTAFF



THE JAPANESE attack on Pearl Harbor on the morning of December 7, 1941, brought to an end a long era of peaceful, if not always cordial, relations between the United States and Japan. It also marked the beginning of a period of war in the Pacific, a period during which all normal international relationships are interrupted and at the end of which new patterns and new policies will be required. This would therefore appear to be an opportune time to look back over the history of the Far Eastern policy of the United States to see wherein it has failed and why, and also to look forward to some of the problems of post-war reconstruction. What I have to say is based upon the belief that the United Nations can and will decisively defeat Japan, in spite of the enormous difficulties involved. Any other assumption would render discussion of post-war policy futile, for a Japanese victory, or even a negotiated peace, would make a democratic "new order" in the Pacific Area impossible.¹

The cardinal principle of American Far Eastern policy from the beginning of our interest in Eastern Asia has been the Open Door doctrine. While the term was not coined until the twentieth century, the doctrine itself—that citizens of the United States shall enjoy all the privileges and benefits which have been granted to the subjects of other states—has been the foundation of our policy since the establishment of treaty relations. It is true, of course, that the American government has sought equality of opportunity for its citizens in all parts of the world, but only in the Far East has maintenance of the Open Door become a distinct and fundamental principle of national policy.

During the nineteenth century the Open Door doctrine was given legal expression in the most-favored-nation clauses which were written into the treaties negotiated by the United States with Siam, China, Japan, and Korea. A typical most-favored-nation clause, that included in Article 30 of the Chinese-American Treaty of Tientsin signed in 1858, reads as follows: "The contracting parties hereby agree that should at any time the Ta-Tsing [Chinese] Empire grant to any nation, or the merchants or citizens of any nation, any right, privilege or favor, connected either with navigation, commerce, political or other intercourse which is not conferred by this treaty, such right, privilege, and favor shall at once freely inure to the benefit of the United States, its public officers, merchants and citizens."² With such a promise, as long as no outside power made its fulfillment impossible, the government of the United States could be sure that American merchants and missionaries had at least a legal right to all the advantages which might be extended to the citizens of any other country.

The comparatively small number of Americans who lived

in the Far East during the nineteenth century were content with the quiescent policy of their government, for their demands were reasonably well met by the automatic extension to them—through the most-favored-nation clauses—of the additional privileges secured from time to time by the more aggressive European powers. There were occasional bursts of American initiative, as during the 1850's, when Japan was reopened to foreign intercourse through the efforts of Commodore Matthew Perry and Townsend Harris, but for the most part the United States was satisfied to depend upon the leadership of others—most notably upon that of Great Britain.

Toward the end of the century the relative stability of the Far East was threatened by the intrusion of that violent imperialistic competition which had for decades caused dissension and strife among the various European powers with interests in Africa and elsewhere in Asia. Japan, not a particularly attractive prize anyway, had by a herculean effort managed to strengthen itself against almost any possible threat; but China and Korea were rich potential markets and sources of raw materials, and were at the same time incapable of defending themselves. When the debacle of the First Sino-Japanese War had demonstrated the extent of China's weakness, Russia, France, and Germany moved in like vultures, each intent upon seizing a substantial portion of that unhappy country. Even Great Britain and Japan participated in the ensuing "scramble for concessions," although they had reason to prefer the preservation of the *status quo*, at least for the time being.

As the European powers fell over one another in their haste to secure leaseholds and to stake out spheres of interest in China, it became increasingly clear that a mere

Chinese promise of most-favored-nation treatment would no longer suffice to insure equality of opportunity. It so happened that the "scramble for concessions" coincided with a sudden upsurge of American interest in the Far East, which was the result of the unexpected occupation of Manila during the Spanish-American War and the subsequent annexation of the Philippine Islands, the growing realization by a few leading American industrialists and merchants that they might soon need to seek substantial markets abroad, and the imperialistic writings and speeches of a small but influential group of expansionists. At just the moment when American enterprise seemed to be ready for the first time to make extensive use of the Open Door in China, it became apparent that drastic measures would be required to keep the door from being closed.

Recognizing that China itself could no longer maintain the Open Door, and that the leaseholds and concessions which had already been forced from it gave advantages to the nationals of the favored powers which could hardly be expected to accrue to the citizens of the United States, the Department of State decided that its only resort was to seek self-denying commitments against further encroachments. Therefore, on September 6, 1899, Secretary of State John Hay sent the first of his so-called Open Door notes to the leading states with interests in China. The United States acknowledged the existence of the leaseholds and spheres of interest which had already been secured, but requested the powers concerned not to interfere with any treaty port or vested interest, nor to discriminate in favor of their own nationals respecting harbor dues or railway charges. Finally, they were asked not to interfere with the exercise by China of its sovereign right to collect taxes within their

spheres. Despite the fact that none of the governments addressed accepted the proposal without reservation—the Russian reply amounted to a virtual rejection—Secretary Hay unblushingly announced that all the powers had assured him of their acceptance of the principles laid down in his note.

Less than a year later, when there was reason to fear that some of the European powers might take advantage of the Boxer uprising to wrest additional exclusive concessions and even territory from China, Secretary Hay undertook further to strengthen the Open Door doctrine by means of another note addressed to the interested governments. In this second note, dated July 3, 1900, the American objective in participating in the international anti-Boxer expedition was declared to be “to seek a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire.”³ This represented a considerable extension of the traditional American doctrine—especially the realistic emphasis upon the necessity of preserving the territorial and administrative entity of China—and even though the governments addressed did not reply to the American note, it remained the definitive statement of the Open Door doctrine until the Washington Conference more than two decades later.

The annexation of the Philippine Islands in 1899 made the United States a Far Eastern power for the first time and established interests in that part of the world which rapidly became far more important to this country than the comparatively minor activities of merchants and missionaries in China and Korea. Whereas the government of the United

States had for some time been mildly interested in the preservation of the *status quo* in parts of the Far East as a means of bolstering the Open Door, the acquisition of large possessions there crystallized the feeling that maintenance of a Far Eastern balance of power was desirable into a basic tenet of American policy no less important than the Open Door doctrine itself.

Between 1895 and 1904 Russian expansion in the Far East caused the United States and most of the other powers grave anxiety, and it was primarily the Russian threat to both the Open Door in China and the balance of power in Eastern Asia which inspired the Hay notes of 1899 and 1900. After the Russo-Japanese War, however, Japan replaced Russia as the greatest potential threat to American interests in that quarter, and American fear and dislike of the Japanese have grown steadily since 1905. American suspicion of Japanese intentions has not been confined to their activities in the Far East, however, for even as early as 1898, when the annexation of the Hawaiian Islands was being debated, those who advocated the step spoke frequently of the danger of Japanese occupation of the islands, with its serious consequences for the Pacific coast of the United States. Seldom has a year passed since 1905 during which the conviction has not been expressed in this country that Japan was strengthening itself in Asia in order to invade the continental United States. This fear, particularly widely felt in the Western states where Japanese immigration was long a cause of friction, has continually been reflected in the Far Eastern policy of the American government. In fact, American interest in the preservation of Chinese independence, and even our concern during most of the present century for the maintenance of the Open Door, have been directly re-

lated to our desire to see the development of a China strong enough to act as a counterpoise to Japan.

Occasionally the two major principles of American Far Eastern policy have come into conflict, as during the administration of President Theodore Roosevelt, when in the Taft-Katsura memorandum the Open Door was sacrificed in Korea, where American commercial interests were insignificant, in exchange for Japanese disavowal of aggressive intentions toward the Philippine Islands. However, the older doctrine was retained in respect to China, as shown a few years later in the Root-Takahira agreement, in which Japan and the United States agreed to respect each other's territorial possessions and to favor maintenance of the *status quo* in the Pacific; but at the same time they bound themselves to uphold the Open Door in China and to support by pacific means the independence and integrity of that country.

The uneasy equilibrium in the Far East was finally upset by the First World War. Great Britain, France, and Russia, preoccupied with their war efforts in other parts of the world, were compelled to allow Britain's ally Japan freedom of action in Eastern Asia. Japan's first step, which might be considered a fulfillment of its obligation to its ally, was to seize the German holdings in Shantung and a number of the German islands in the Western Pacific. But immediately thereafter it embarked upon a much more ambitious program, calculated to extend Japanese control over all of China. In January, 1915, the Japanese minister in Peking presented to President Yüan Shih-k'ai the notorious Twenty-one Demands, full compliance with which would have made China a virtual protectorate of Japan and at the same time would have closed the door of equal opportunity. The Chi-

nese opposed the demands with every diplomatic weapon at their disposal, and the United States and even Japan's ally Great Britain brought pressure to bear, with the result that the Japanese, not yet ready to defy the Western powers, finally withdrew the most drastic demands. For the time being they contented themselves with a series of treaties which left China in possession of its territorial and administrative integrity but which nevertheless greatly enhanced the Japanese economic position in that country. The American policy during the First World War was not wholly consistent, for while the Department of State reiterated its belief in the Open Door and the independence of China, it also officially recognized that Japan had special rights in China arising from territorial propinquity—a concept scarcely calculated to insure equality of opportunity for all.

The next expansionist move of the Japanese was made against the Russian position in northern Manchuria and eastern Siberia. After the Russian Revolution an inter-Allied expedition was sent into that region ostensibly to prevent Allied supplies from falling into German hands and to rescue a large body of Czechoslovak soldiers who had been released from Russian prison camps. The Japanese, taking advantage of their participation in the expedition, sent a disproportionately large number of soldiers and sought by intrigue and actual occupation to establish permanent control. Recognizing Japan's intentions and realizing their implications for the Far Eastern balance of power, the United States dispatched troops of its own, hoping that their presence in the expeditionary force would serve as a deterrent to the Japanese. At the same time the American government extended to Russia the doctrine which it had sought since 1900 to uphold in China—namely, the preservation of in-

dependence and of territorial and administrative integrity—and in addition used all possible diplomatic means to prevent permanent Japanese occupation. The Japanese troops remained when the Americans departed in 1920, but within a year or two they also were withdrawn.

Although the United States was compelled by the exigencies of the First World War to direct its attention away from the Far East, once the Armistice had been signed it turned again toward the Western Pacific with the intention of re-establishing a balance of power and strengthening anew the Open Door in China. At the Paris Peace Conference the American delegation endeavored to reduce Japan's greatly augmented strength by preventing permanent transfer to it of the former German holdings in Shantung and of the German North Pacific islands which separate the United States from the Philippines. Previous to the conference, however, Japan had managed to commit the principal Allies to the support of its claims, and in the end President Wilson, fearing that continued American opposition would prevent realization of his dream of a League of Nations, was constrained to leave the Japanese in control of their conquests. The Far Eastern settlement dissatisfied the American people and greatly increased their fear and suspicion of Japanese ambitions and their determination that Japan should not dominate the Pacific.

The Armistice of 1918 found the United States, Great Britain, and Japan in the midst of tremendous naval construction programs, and while all would have preferred to curtail their exorbitant naval expenditures, none was willing to halt its program while the others continued to build. In the United States, while there was some jealousy of the British navy, continuation of the program was directed pri-

marily against Japan. However, the tremendous expense of naval competition, as well as the international tension which it engendered, soon set in motion a movement to seek means by which international naval limitation might be effected. After some preliminary conversations, the government of the United States issued invitations to a disarmament conference to be held in Washington during the winter of 1921-1922. At the suggestion of the British government, which at that time apparently saw more clearly than did the Department of State the close relationship between naval rivalry and the problems of security and stability in the Pacific, the agenda of the conference was broadened to include the most pressing political problems of that area.

At the Washington Conference all the leading principles of the Far Eastern policy of the United States were written into international law. The Nine-Power Treaty, in terms more sweeping than had ever been proclaimed before, bound its signatories to respect the sovereignty, the independence, and the territorial and administrative integrity of China; to refrain from taking advantage of conditions in China to advance their own selfish interests; and to support the Open Door doctrine. The Five-Power and Four-Power Treaties fixed the political *status quo* in the Pacific by instituting "safe" naval ratios, limiting fortifications, and pledging the respect of the major Pacific powers for each other's possessions in that region. Insofar as treaties are binding, the Washington Conference re-established the balance of power in the Far East and guaranteed the Open Door in China.

For almost a decade after the Washington Conference it appeared to observers on this side of the Pacific that American aims in the Far East had been permanently achieved. Even the London Naval Conference of 1930, which estab-

lished limits for the smaller vessels not covered by the Five-Power Treaty, failed to disclose the extent of Japanese impatience with the static position to which Japan had been confined by the Washington treaties. From time to time loud rumblings and occasional outbursts of dissatisfaction could be heard within Japan, increasing in frequency and intensity as the world plunged into the great depression. Finally, on September 18, 1931, the explosion occurred, the so-called Mukden Incident which inaugurated a new era of Japanese expansion the end of which is not yet in sight.

Three days after the invasion of Manchuria was launched China appealed to the League of Nations under Article XI of the Covenant, and at the same time called upon the United States, as sponsor of the Pact of Paris (the so-called Kellogg-Briand anti-war agreement), to help preserve the peace in the Far East. Secretary of State Henry L. Stimson, recognizing the threat not only to world peace but also to the Nine-Power Treaty which embodied the leading principles of American policy in the Far East, promptly took measures to associate the United States with the League's effort to check Japanese aggression. When attempts to persuade Japan to withdraw her troops from Manchuria failed, Secretary Stimson undertook to induce the League to apply sanctions by promising that the American government would re-enforce such action. But the leading members of the League Council declined to consider sanctions, and there is reason to doubt that the people of the United States were prepared to support such drastic measures. Consequently Secretary Stimson was compelled to confine his activities to the realm of diplomacy. On January 7, 1932, he proclaimed what has since been known as the Stimson Non-recognition Doctrine, a doctrine which was first stated by Secretary of

State W. J. Bryan in 1915 but which after its vigorous re-statement by Secretary Stimson became a leading instrument of American foreign policy. The Stimson doctrine, set forth in identical notes to Japan and China, proclaimed to the world that the United States "can not admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement . . . which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the open-door policy; and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris . . ." ⁴ Secretary Stimson believed that public opinion all over the world would rally to the support of this principle, and it is true that the League Assembly adopted a similar declaration a few months later and the following year approved a resolution calling upon League members not to recognize Manchoukuo. Meanwhile, however, Japan, after resigning from the League of Nations, proceeded with its program of conquest in defiance of world opinion.

The Far Eastern policy of the administration of President Franklin D. Roosevelt has been much less vigorous than that of its predecessor, although the Department of State protested strongly against the closing of the door of equal opportunity in Manchuria and has continued to support the Non-recognition Doctrine. Moreover, when the so-called Amai doctrine, that Japan has the right to act alone in maintaining peace and order in Eastern Asia, was proclaimed by a Foreign Office spokesman in 1934, Secretary of State Cor-

dell Hull emphatically denounced it as contrary to Japan's treaty commitments and unacceptable to the United States.

With the outbreak of the Second Sino-Japanese War in 1937 the American government appeared to revert altogether to the quiescent Far Eastern policy of the nineteenth century, concerning itself almost entirely with the diplomatic protection of American lives and property and with protests against violations of the Open Door. Numerous complaints regarding treaty infractions were lodged with the Japanese government, but there was a complete absence of that vigorous effort to mobilize collective action in support of the treaties which had been exerted by the preceding administration. Shortly after the war broke out a conference of the signatories of the Nine-Power Treaty and other interested powers was called to meet in Brussels, to seek means of bringing hostilities to an end. But the unwillingness of any of the original signatories to assume leadership resulted in the accomplishment of nothing more than a reaffirmation of the principles embodied in the original treaty.

For the time being the Department of State apparently abandoned interest in the maintenance of a balance of power in the Far East; or it may have hoped to purchase security by appeasing Japan while the United States navy was being built up. It is perhaps significant that the preservation of the independence and of the territorial and administrative integrity of China, considered during the first three decades of the twentieth century to be essential to the maintenance of both the *status quo* in the Far East and the Open Door, has scarcely been mentioned in official statements during the administration of President Roosevelt. Moreover, even after it became clear that the Japanese were determined to secure control of the whole of Eastern Asia, the American govern-

ment continued to permit them to buy in this country materials of war with which to pursue the program which had for so many years been looked upon as inimical to our interests.

The surrender at Munich encouraged Japan to take steps in the direction of the rich colonies of France, Great Britain, and the Netherlands in and adjacent to Southeastern Asia, even while it was still very much occupied with the China campaign, and in February, 1939, Japanese forces invaded the strategic island of Hainan and in March occupied the Spratly Islands far to the south. In the face of this threat not only to the militarily weak American position in the Philippines but also to the rich European colonies whence the United States derived essential materials such as rubber, tin, and quinine, the American government cleared its decks for possible economic counter-measures by denouncing the Japanese-American Commercial Treaty of 1911, apparently hoping that Japan would be intimidated and so desist from further moves which might imperil the United States.

From the outbreak of the Second World War, almost every German victory in Europe was followed by a Japanese advance southward—into Annam, to Saigon, and finally up to the border of Thailand. Each Japanese step was met in turn by an American economic countermove such as a new loan to China or an embargo on the export of some commodity necessary to Japan, but instead of causing the Japanese to desist, these slaps on the wrist seem only to have provoked them to further action. Even while the American government was penalizing Japanese acts of aggression it was pursuing an apparently contradictory policy of appeasement. Reference to Japan was carefully avoided in official

statements condemning the Axis; Japanese nationals in the Western Hemisphere were not subjected to the restrictions imposed upon Germans and Italians; and Japan was permitted to continue to buy large quantities of oil and other war materials in the United States. Meanwhile American Far Eastern policy was being increasingly influenced by the shifting American relationship to the war in Europe, and when it became clear that we must ultimately join Great Britain against Germany, practically all other activities were subordinated to American rearmament and material aid to Britain.

Before undertaking to pass judgment on the Far Eastern policy of the United States, it may not be amiss to call attention to two aspects of our policy which, although they have not been considered as important historically as the balance of power and the Open Door, are not without significance. The first of these, preservation of the independence of China, I have already frequently referred to, for it was the strongest prop to both major principles from 1900 to 1933. But it must also be recognized as a principle in its own right. Having watched with great interest China's effort to create a strong modern state, and believing that not a little of the Chinese progress of recent decades has been due to American educational and philanthropic activity, the people of the United States have felt that they had a stake in the preservation of an independent China. The Department of State may have sought to strengthen China against external aggression primarily as a means of maintaining the Open Door and checking Japanese ambitions, but much of the popular support for this policy has derived from the widespread feeling of friendliness and sympathy for the Chinese people.

The other aspect of our policy which I wish to mention, while world-wide in scope, has been applied most often to Far Eastern problems. It is the insistence upon peaceful and orderly processes in international relations. Popular approval of this principle, which is based upon the belief that international harmony and peaceful intercourse depend upon respect for treaty commitments and the peaceful settlement of international disputes, has grown rapidly in the United States since the First World War. Two of its most vigorous advocates have been Secretary Stimson and Secretary Hull. Secretary Hull, in fact, has made it his most important weapon in the defense of American interests in the Far East, repeatedly saying, in answer to Japanese pleas of "changed conditions" in justification for the violation of treaties, that the United States is willing to negotiate the revision of treaties which are outmoded but that it will not recognize the validity of unilateral denunciation.

Having examined the Far Eastern policy of the United States historically, let us now turn to a consideration of the degree of success with which its purposes have been achieved. During the nineteenth century, as we have seen, the one object of our policy in the Far East was to secure equality of opportunity for American citizens. This was obtained by the inclusion of most-favored-nation clauses in our treaties. However, there is no reason to credit the success of our policy to any special effort made by the government of the United States, for both China and Korea were anxious to extend equal privileges to all nations as a means of preventing acquisition of too much control by any one; and, so far as we know, neither Siam nor Japan objected to the most-favored-nation system. Moreover, Great Britain, which not only dominated Far Eastern trade during this period but

also possessed overwhelming naval superiority in that part of the world, was willing to share its trading opportunities with others, apparently content with its strong competitive position. Had Great Britain objected to the automatic extension to other nations of the concessions and benefits which it secured by the actual or threatened use of force, the Open Door policy would in all probability have been a failure.

We have also seen that when the imperialistic nations of Europe threatened to put an end to equal opportunity in China toward the close of the century, the American government sought through the Hay notes of 1899 and 1900 to commit them to the support not only of the Open Door doctrine but also of the territorial and administrative entity of China without which equal opportunity could hardly be preserved. This bold gesture, made by a vigorous nation which had just won a war, undoubtedly caused some of the governments addressed to hesitate at least momentarily, but it was scarcely the great *coup* some historians have pronounced it. The decisive factors in the prevention of the threatened partition of China at that time appear to have been Britain's preference for the Open Door, because of her advantageous position in a free market, and the unwillingness of any other power to risk starting the major war which it was widely believed a scramble for Chinese territory would precipitate. In spite of the Hay notes, the Russians went ahead with their plan to cut off Manchuria, and their aggression was not stopped until the outbreak of the Russo-Japanese war in 1904. Again the American aim was achieved, but largely because of circumstances over which the United States had no control.

The weakness of American policy was most clearly demonstrated during the First World War when Japan, with very little effort, was able to assume a dominant rôle in the West-

ern Pacific. Uncertain whether the growing military and naval strength of the United States might be turned against it if American opposition to the Twenty-one Demands was completely ignored, Japan finally withdrew the most objectionable of them, but even so managed greatly to strengthen its economic position in China at the expense both of the interests of other powers and of China's integrity. Moreover, at the Paris Peace Conference American efforts to counteract Japan's gains in the Far East failed utterly. Even the Japanese attempt to seize Russian Far Eastern territory was balked by the courage and determination of local Russian opposition and by Japanese bungling rather than by any positive action on the part of the United States.

The Washington Conference provided the setting for the most successful attempt of the American government to win international acceptance of its Far Eastern policy. While the conference was called primarily to halt naval rivalry, its most significant accomplishments were the freezing of the *status quo* in the Pacific and the incorporation into international law of the American principles of the independence of China and non-interference with the Open Door. The Washington treaties called for a certain amount of self-sacrifice on the part of all the signatories, but at the same time they gave to each an added feeling of security. Japan was the only Pacific power which might have been expected to refuse to sign the treaties, but a combination of circumstances made them acceptable to it at the time. For one thing, the Japanese people were weary of costly military adventures abroad, and the cost of naval competition with two such wealthy rivals as the United States and Great Britain did not appeal to them. Moreover the government in power was disposed to be friendly toward China, believing that friendliness would

encourage trade, to the profit of both. Finally, while the Washington treaties committed Japan to a policy of non-interference in China, the other powers were similarly bound, and, what is more, the provisions for the limitation of capital ships and fortifications left Japan in an unassailable position in the Western Pacific.

As long as Japan continued to be dominated by leaders who believed that aggression does not pay, the structure erected by the Washington treaties, embodying the principles of American Far Eastern policy, stood unimpaired. But when the Japanese army launched its Manchurian campaign in September, 1931, the essential weakness of the structure was demonstrated. The Japanese proved again in 1931 what had been well known in 1914 but had been forgotten by most people during the 1920's, that states will be bound by the treaties they have signed only as long as they are convinced that compliance is more advantageous to them than repudiation. Japan continued to live up to its commitments under the Five-Power Naval Treaty until it could legally renounce the treaty in 1934 because it was aware that the United States and Great Britain could and would outbuild it if challenged to do so; however, it was sure enough that violation of the Nine-Power Treaty would not lead to reprisal to be willing to take the risk. Again, as on previous occasions, the Far Eastern policy of the United States failed when subjected to a real test. And for the same reason: the unwillingness of the American people to implement their principles with enough force to insure their being respected. Secretary Stimson recognized the necessity of giving effective support to the policies to which the United States and other leading powers had committed themselves, but his attempts to secure collective support for punitive

measures against Japan met with failure. Thus collapsed the idealistic but impractical treaty system by which the American government had sought to implement its foreign policy. The Stimson Non-recognition Doctrine was but the final confession of the failure of the United States to maintain its Far Eastern policy by means of admonition and unsupported diplomacy.

The weak Far Eastern policy of the middle 1930's was directly related to the ostrich-like attitude of the overwhelming majority of American citizens, who believed their country could isolate itself from the rest of the world and remain at peace. Fully aware of the American determination to shun foreign entanglements, and sure that the protests of the Department of State would not be backed up by force or even by measures short of war, the Japanese felt free to attack Americans and their property in China almost at will and to flout those treaty commitments which ran counter to their purpose to create a new "order" in Eastern Asia. American Far Eastern policy thus reached its lowest ebb, and there were even demands within the United States for complete withdrawal from the Western Pacific.

Only by appreciating the global significance of the Axis War can one understand the reasons for the inconsistencies in American Far Eastern policy during the past three years. President Roosevelt and his advisers recognized the inevitability of war with Germany—and eventually with Japan—and they evidently felt compelled to direct our policy toward the achievement of immediate ends. The problem was to keep Japan out of the war as long as possible, not only in order to protect Allied supply lines and sources of essential raw materials in the Southwestern Pacific but also to give the United States more time in which to strengthen itself for

the inevitable struggle. Until July, 1941, we continued to sell to the Japanese certain war commodities—notably oil—hoping thereby to keep them dependent upon us, while at the same time we undertook to discourage their southward advance by threats and economic penalties. A plausible explanation of American willingness to participate in the protracted and unpromising diplomatic conversations carried on with Japan during 1941 is that it was hoped the negotiations would keep the Japanese in a state of uncertainty and so allow additional time for American rearmament. This hope was based upon the belief of many influential persons in Washington that Japan would go to almost any length to avoid war with the United States. This policy, like those which preceded it, failed, for Japan, driving straight toward its objective, merely lulled the United States into dreaming that appeasement might succeed, while it gathered strength for an attack under such conditions as appeared to be most promising of success.

Even today, when the defeat of Japan seems a distant goal, it is not too early to begin thinking about the post-war settlement, for the promise of a satisfactory solution of the problems of the Pacific can lend substantial support to the entire war effort. On November 26, 1941, Secretary Hull sent to the Japanese government a note outlining a plan for the settlement of the outstanding issues between the two countries. This note provides us with the most comprehensive statement of Far Eastern policy that the Roosevelt administration has issued and may be taken to indicate the essentials of the program for post-war reconstruction in the Pacific which it favors.

The high point of the note is its enunciation of four broad principles of Far Eastern policy: (1) inviolability of the

territorial integrity and sovereignty of all nations; (2) non-interference in the internal affairs of other countries; (3) equality, including equality of commercial opportunity and treatment; and (4) reliance upon international cooperation and conciliation for the prevention and pacific settlement of controversies.⁵ Some of the detailed proposals for applying the four principles are no longer feasible because of changes already wrought by the war, but the principles themselves are susceptible of application to any post-war situation. Within the general framework of Secretary Hull's four principles, let me suggest what seem to me to be some of the requisites of a lasting peace in the Far East.

China must be made strong enough to be able to protect itself from all threats to its independence and territorial integrity. The United States has already promised to give up its special treaty rights, such as extraterritoriality and the privilege of stationing troops and warships in China, which derogate from Chinese sovereignty. But we shall have to go much further than this. Extensive financial and technical assistance must be made available to China to enable it to rebuild its cities and industries and to rehabilitate all phases of its national life. This should not be difficult to arrange because of the close cooperation which will have been worked out in the course of the war with our most important ally against Japan. China probably will become the leading power in Eastern Asia once peace is restored, for its potentialities in natural resources and manpower, as well as its capacity for achievement in all fields of human endeavor, mark it for pre-eminence.

Japan, too, must be restored to a position of equality in the family of nations after its defeat, although means will have to be found to curb its aggressiveness. No peace can be

hoped for in the Far East if the normal human inclination to destroy a cruel and ruthless enemy is permitted to have full play, for the Japanese are a proud as well as numerous people, and it would be neither possible nor desirable to hold them in a state of permanent suppression. Almost superhuman understanding and statesmanship will be required to solve the Japanese problem.

No less difficult and complicated will be the solution of the colonial problem, for the shattering of the prestige of the white man and the collapse of his system of colonial exploitation have been complete. The growing nationalism of the dependent peoples of the Far East will have to be recognized, and it may be feasible to reorganize the colonial areas under an international body which will administer them while the inhabitants are being prepared for self-government. The territorial integrity and sovereignty of all the former colonies of Japan, the United States, and the European nations will have to be guaranteed both before they have achieved self-government and afterward.

To prevent interference in the internal affairs of the weaker nations of Eastern Asia not only military but also political and economic aggression must be made impossible. In order to lessen the vulnerability of economically weak countries, capital and essential raw materials and finished products must be made available to them under international auspices, and provision will also have to be made for them to sell their products abroad.

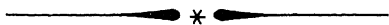
The most pressing problem of equality in the Far East is that of racial equality. The assumption of white superiority has aroused hatred of Westerners throughout the Orient, and it can no longer be tolerated. Not a little of the Japanese ill will toward the United States derives from understand-

able resentment against the American naturalization laws which deny to Orientals the privilege of American citizenship. The present war has already conclusively demonstrated to all the colored peoples of the Far East that white superiority is a myth, and it must be obvious that the Far East cannot be reorganized after the war except on a basis of complete racial equality.

The note of November 26, 1941, proposed to continue to implement the peace of the Pacific with non-aggression pacts and old-fashioned self-denying treaties. These have failed in the past and it would be folly to depend upon them in the future. It may be too early to define a satisfactory post-war world organization, but it is not too early to make up our minds that we will never again commit ourselves to a foreign policy which we are not prepared to implement with force.

THE UNITED STATES AND THE BALANCE OF POWER

PHILIP E. MOSELY



THE CONCEPT of the balance of power has a long tradition behind it. But it is not a tool of thought which comes handy to Americans in analyzing our position in world affairs. For us the idea of a balance of power has usually been associated with Europe and the European states system, less commonly and only more lately, with the Far East.

In the debate over the nature of America's place and policy in the world—a debate which, since December 7, 1941, has been stilled, or perhaps merely postponed—the idea of a vital American concern in the balance of power was beginning to take form. With the fall of France, there developed in this country a growing awareness of the great importance for us of the continued resistance of Britain. If Britain's strength had been eliminated in 1940, or subjected to Hitler's control, our position would now be exceedingly vulnerable, perhaps untenable. At about the same time, China's resistance to the armies of Japan—a resistance which we had applauded for its endurance and courage—

now came to have a direct importance for us. We now saw in it a factor limiting to some extent Japan's ability to expand into areas vital to our security and prosperity.

Yet, at bottom the choice of our course was not argued in terms of the balance of power. The dispute turned much more on the question of how best to safeguard our accustomed way of life. "Isolationists" and "interventionists" alike agreed in attaching a special value, felt rather than defined, to the "American way of life." They disagreed passionately concerning the policy by which that way of life could be protected and fostered.

Many isolationists felt that the "American way" was closely tied up with a multitude of national and individual habits and comforts and that it could be preserved only by cushioning this country against shocks and stresses from without. Others took a less complacent view, but they too believed that our own problems were vast enough, and that they could be solved better by ignoring the deeds and misdeeds of the outside world. Because of our geographical position and our great resources, they argued, whatever happens on other continents cannot affect our need and our opportunity for reconstruction at home. Critics of isolationism felt an equally deep attachment to the special values of American life. But these values seemed to them to be in harmony with a profound striving of people everywhere towards a fuller life, a greater mastery of the material universe, and a broadening control of the social environment. The opponents of isolationism came to feel strongly that the main question was not whether America would have to fight to protect its way of life, but whether it would have to fight alone for that way of life.

Behind these conflicting expressions of a shared emotion

lay a difference in the way of sizing up the American "interest." Isolationism draws intellectual sustenance from the assumption that a country's external interests are material in character. In beginning his study of *The Idea of National Interest*, Charles A. Beard laid particular stress on his conception that "national interest should be studied in two main limitations—territory and commerce."¹ According to this interpretation of our history, territory lying beyond our continental domain, commerce with and investments in other countries, are the main factors which might involve the United States in conflicts with other powers. By implication, through subtracting from these commitments, we could reduce or even eliminate the potential causes of war. Isolationists have readily acknowledged that, apart from particular interests abroad, the United States has a general interest in the maintenance of orderly international activities. But they have also been prompt to assume that we could not achieve that essential purpose, whether because of its inherent difficulties, because of our alleged "innocence" in world affairs, or because of the "wickedness" of the rest of the world. Isolationists have not envisaged very concretely the strains and risks which we would undergo in trying to carry on the "American way" if we were completely "isolated" by a combination of hostile and predatory powers.

Isolationism has deep roots in American feeling. It rests in part on a tradition of being a "chosen people," a tradition which has been nourished by Puritan thought and by national pride. It also grows from a latent but genuine hostility to Europe. In general, newcomers to this country have discarded their earlier attachments rather easily. This process has often been hastened by a positive antagonism towards the "old world," which has been compared disadvanta-

geously with the new in balance of opportunities enjoyed and burdens incurred. The feeling of the separateness of America from Europe was strengthened by the rapid development of the United States as a nation in a region and a period remote from the wars of nineteenth-century Europe. However, a longer perspective suggests that before and since the nineteenth century the separation of America from Europe has been much less real than we have liked to assume.

In the colonial period of our history European settlements in America were, as a matter of course, bound in with the operation of the European balance. A decisive battle in Flanders might be followed by a change in the ownership of some trading-post or colony in America or elsewhere. Increasingly, the British colonies in North America, from being pawns, became active agents. It was, in large part, through this quality of taking root in the new soil that the thirteen colonies gained their independence. But we must not minimize the part played by the French alliance and the Northern League of Armed Neutrality in convincing England that the risks of continuing the struggle outweighed any advantages it might secure through reconquering the colonies.

The founders of the new republic had had to be well versed in the intricacies of power politics. But, as leaders of a country of three million people, they looked mainly to the part which the United States might play in the Western-Atlantic sub-balance of power. As Alexander Hamilton wrote in 1788,

By a strong adherence to the Union, we may hope, ere long, to become the arbiter of Europe in America, and to be able to incline the balance of European competitions in this part of the world as our interests may dictate.²

It was, in considerable measure, through the operation of the balance of power in Europe, as well as through the growing strength and ambitions of the American people, that our expansion across the North American continent proceeded without encountering any insuperable external obstacles. This factor was particularly significant in our acquisition of vast territories from France and Russia, and only somewhat less so in the annexations of Spanish, Mexican, and British-claimed areas.

Within a generation after Hamilton's death, the United States was strong enough to aim, not merely to be an effective factor in the interplay of European interests in the Western Atlantic, but even to set a barrier to further European expansion in the Americas. Although the Monroe Doctrine was as much directed against Great Britain as against the states of continental Europe, its seeming boldness was tempered by the knowledge that the British government was likewise opposed to the efforts of the Holy Alliance to restore the Latin American Republics to Spanish control or to parcel them out for their several advantage.

As a counterpart to prohibiting European conquests in the Americas, Monroe proclaimed it to be the policy of the United States not to interfere in purely European concerns. This doctrine of the "separation of the hemispheres" has, in recent years, found zealous supporters among the spokesmen of the Axis. There is, of course, no need to labor the point that Japan's "Monroe Doctrine for Asia," and Hitler's claim to speak in the name of a Europe conquered and muzzled, bear not the faintest resemblance to the American Monroe Doctrine, especially in its "continentalized" form of today. But, even at the risk of falling into the most unhistorical of sins, that of text-worship, it may be worth our

while to turn for a moment to Monroe's own words. Did James Monroe and John Quincy Adams, as Goebbels and Gayda and Matsuoka would have us believe, regard American abstention from European concerns as an absolute norm of our national policy? Was this abstention without condition or qualification?

In discussing the recent changes in Europe, President Monroe pointed out that . . .

of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellowmen on that side of the Atlantic.

He then went on to say:

In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy, so to do. It is only when our rights are invaded, or seriously menaced, that we resent injuries, or make preparation for our defense.³

The authors of the Monroe Message were on firm ground in arguing that the United States had "never taken any part . . . in the wars of the European powers in matters relating to themselves." Although this country had only recently waged a declared war against Great Britain and an undeclared naval war against France, these had been undertaken to defend American interests, and not with any purpose of influencing the outcome of the revolutionary and Napoleonic struggle in Europe. However, the careful phrasing, ". . . in the wars of the European powers in matters relating to themselves . . . ," suggests that not all wars of European powers are fought over matters relating only to Europe. Wars of

European powers which, in their course or by their probable outcome, change the balance of power on the oceans or throughout the world, and thus affect deeply the security and welfare of the United States are plainly in a category distinct from the purely European wars and purely European shifts of power to which Monroe referred.

In asserting that the United States was ready to defend its rights when they were "invaded or seriously menaced," Monroe did not, even by implication, assume that this country had rights in the Western hemisphere alone, or that it would defend only such of its rights as were located there. The naval expedition of 1815 against the Barbary pirates showed that such a limitation of American rights was not a part of the intellectual baggage of Adams or Monroe.

The part of the Message most significant today is the one which refers with genuine alarm to the doctrine of the right of intervention—a doctrine which was then preached and practised by the Holy Alliance and which has been revived in a more brutal form by the Axis. In this connection the Message says:

The late events in Spain and Portugal shew that Europe is still unsettled. Of this important fact, no stronger proof can be adduced than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed by force, in the internal affairs of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested; even those most remote, and surely none more so than the United States.

The principle of intervention, which the Axis powers have applied again and again under the flimsiest pretexts to justify their aggressions, could hardly have been denounced in

plainer speech. Originally, while composing his Message, Monroe had intended to attack this principle even more strongly, and to declare even more vigorously America's moral support for the liberal cause in Greece and Spain.⁴ In its final form, however, under Adams' insistence on proclaiming "an American cause," the Message declared that

. . . we should consider any attempt on their part to extend their system to any portion of this hemisphere, as dangerous to our peace and safety.

Practical politics limited to the Western hemisphere American resistance to the principle of intervention. But the American condemnation of interventionism, as a principle dangerous to this country and to all free peoples, was not thus circumscribed. Monroe's own words and feelings on this point have nothing in common with the crude contention of Messrs. Goebbels and Matsuoka that the United States has, or should have, no concern with the world outside the Americas, and that, by implication, the Axis powers are therefore free to conquer and to exploit against the United States all peoples and areas outside the Western hemisphere! The generous and high-minded concept which dictated Monroe's statement of the American interest can hardly be twisted into this Axis-inspired caricature of the Monroe Doctrine as a policy of trembling and short-sighted hide-saving.

These late attempts to transform the principle of the "separation of the hemispheres" into a strait-jacket for American policy had their parallel in the days of the Holy Alliance. In the year of Monroe's Message, Chateaubriand, then foreign minister of France, was urging that the United States be excluded from all deliberations of the European

powers. This principle, he hoped, "might serve in case of need as a supplementary article of the public law of Europe." ⁵

In stating his "American cause," John Quincy Adams harbored no illusions regarding the ability of the United States to enforce the Monroe Doctrine single-handed. In 1823 and 1824 there were persistent rumors that a French expedition was being fitted out to conquer the Republic of Colombia. Encouraged by Monroe's declaration, the Colombian government inquired whether the United States would not be willing to join with it in a defensive alliance against the threat of European aggression. In his reply, of August 6, 1824, Adams said bluntly that

. . . it is obvious that the United States could not undertake resistance to them [the powers of the Holy Alliance] by force of arms, without a previous understanding with those European powers whose interests and whose principles would secure from them an active and efficient cooperation in the cause.⁶

Thus, even for Adams, the enforcement of the Monroe Doctrine rested on the assumption that the European powers would be divided on this issue, that Britain had a parallel interest in protecting the Latin American Republics, and that Britain's cooperation could be counted on to that end.

The policy of nineteenth-century America towards Europe was a mixture of lofty moral support for liberal principles and a careful avoidance of involvement in the European states system. The United States was prompt in expressing its sympathy with European struggles for national and political emancipation. Four days after the revolution of February, 1848, the American minister went in person to the headquarters of the Provisional Government of France, to

establish direct relations. No European government made haste to follow this example.⁷ Again, in 1870 the Grant administration, in advance of any other state, extended American recognition to the new government of France.⁸ American sympathy for liberal Germany was equally strong. In 1848 Andrew J. Donelson was accredited to the "Federal Government of Germany." The American government was the only one which gave recognition to the Frankfort Assembly.⁹ In the same stirring years American opinion favored the Hungarian revolution in its struggle for independence. Secretary of State Clayton appointed a special emissary to proceed to Hungary, under favorable circumstances to recognize the Hungarian Republic, and to conclude a commercial treaty with it. The spirit which lay behind this decision, which the suppression of the Hungarian revolution prevented from being fulfilled, was expressed with much exuberance in a letter from Attorney-General Crittenden to Clayton:

Go ahead. It is glorious and will please our people to see the majesty of our Republic exhibiting itself on all proper occasions, with dignity and fearless front, in the eyes and to the teeth of kings and despots.¹⁰

Behind this attitude of stalwart republican defiance lay the realization that we could not even contemplate armed intervention in Europe, and that demonstrations of liberal solidarity, not accompanied by acts, would hardly result in any serious consequences for the United States. When the United States had occasion to interfere in Europe to defend its interests, it took care to hedge its action about with reminders of its aloofness from the European states system. In 1855 the United States took the initiative in denouncing

the Danish Sound dues. When, in its reply to the American ultimatum, the government of Denmark went beyond the question of the dues, to ask the powers to consult with it for the protection of its political security, the American government declined to take part in the conferences which followed, and settled separately with Denmark for its share of the dues.¹¹ Similarly, in 1865 the United States refused to attend an international conference in Constantinople to regulate the quarantine and sanitary conditions of the Ottoman ports. It based this abstention on its traditional policy of non-interference in the internal affairs of other powers.¹² So soon after the threat of European interference with the blockade of the Confederacy by the Northern navy, and at a time when French troops were still upholding Maximilian's rule in Mexico, the American government was especially sensitive to the principle of the "separation of the hemispheres."

In 1884, on the other hand, the United States was the first state to recognize King Leopold's International Association of the Congo as a sovereign entity. Its action thus provoked the calling together of the Berlin Conference, to regulate the African policies of the great powers. Although the Berlin Act of February 26, 1885, had been signed by the American delegate, President Cleveland refused to submit it to the Senate to be ratified. He objected to

. . . thus making the United States appear, without reserve or qualification, as a signatory of a joint international engagement imposing on the signers the conservation of the territorial integrity of distant regions where we have no established interests or control.

However, when the Congo scandal impinged upon the humanitarian conscience in America and elsewhere, our gov-

ernment called the attention of the Congo Free State to the evils reported. In 1906 it went further, in expressing to Great Britain a desire to cooperate in pressing for the reform of the Congo administration.¹³ Towards Liberia too the United States had long shown a protective attitude. From 1843 on, it warned European powers more than once to respect Liberian territory and independence.¹⁴

Curiously enough, it was a sharp clash over the Monroe Doctrine which resulted indirectly in the United States coming to be regarded, in the last decade of the century, as a potential, if passive, make-weight in the balance of power. Through the dispute with England in 1895 over the Venezuelan boundary, public and official opinion in Britain and America became aware of the dangers which a war between them would bring upon each. It became a cardinal point of British policy to settle all disputes with the United States by negotiation, and the British government now became the first power to recognize the applicability of the Monroe Doctrine to relations between itself and the Americas. The simultaneous clash between Britain and Germany over the Kruger telegram and over Germany's colonial ambitions made Britain, now conscious of the risks of its "splendid isolation," eager to rely in the future on having a neutral and friendly United States on this side of the Atlantic.¹⁵ British support for American policy during the Spanish-American War was likewise welcomed in this country.

With the emergence of the United States as a world power,¹⁶ this country was beginning to feel twinges of concern for peace and for the balance of power in the Far East and in Europe. When Russia seemed likely to be overmuch weakened by Japan's continued victories and by the revolution at home, it was American mediation which brought

the belligerents to the conference table. The complete upsetting of the balance of power in the Western Pacific would have endangered the American policy of supporting the Open Door and China's territorial integrity. In passing, it should also be noted that, while American intervention in Siberia, from 1918 to 1920, was dictated by a realization that Japanese domination of the Russian Far East and of Eastern Siberia would be a wrong to the Russian people, it was also inspired by the fear that Japan might thus destroy the precarious balance of power in the Far East and create a threat to Alaska.

President Theodore Roosevelt's good offices in arranging to call a conference on the Moroccan question in 1905 contributed similarly to preserve the peace of Europe and to uphold the European balance of power. Because of the rival alignments of the European states, only an outside government could have exerted pressure on Germany and France to bring their dispute to conference. After Roosevelt had made up his mind to take the initiative in proposing the Algeciras Conference, he was told by his advisers that the United States, as a signatory of the Madrid Convention of 1880 on Morocco, could take this step without being accused of abandoning its policy of non-interference in European affairs.¹⁷ To emphasize that Roosevelt's initiative was not to be interpreted as a commitment to take part in the European states system, the Senate, in ratifying the Algeciras Convention, attached to it a reservation, stating that it had acted

. . . without purpose to depart from the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope.¹⁸

It is a striking commentary on the different light in which our people has viewed its relations with Europe and with Asia that the first Roosevelt could exert America's moral influence for peace in Europe only by means of a legalistic camouflage. Yet his simultaneous efforts to protect the balance of power in the Pacific were accepted without question. The attitude which labels a concern for the peace of Europe as "intervention," but regards as perfectly natural a similar concern for the peace of Asia, derives its force from an unrecognized emotional residuum. A new overseas nation, but recently emancipated from the leading-strings of old-world politics, still looked back with mistrust to Europe; yet it faced the countries of the East with youthful self-assurance.

The outbreak of a European War in 1914 found the United States determined to remain apart from this new outburst of old-world "wickedness." By degrees, however, a minority of our people came to feel that the defeat of the Atlantic powers would result in changes so far-reaching that they would greatly affect our own position and prospects. Still, a majority of Americans would not have joined in the war wholeheartedly if they had not been aroused to the defense of American rights, which were violated by both sides, but more persistently and more inhumanly by Germany. Once committed to the war, the United States turned again to its earlier enthusiasm for republican and liberal ideals. In the pronouncements of President Wilson, it set forth a guide for reconstruction which found wide acceptance among the peoples at war. Although the United States then turned its back upon its own creation—a nucleus for an international order, designed to serve as a barrier to future wars—this country was no longer able, despite its

kicking against the traces, to side-step its new responsibilities with safety. American intervention had tilted the scales of war. American withdrawal from responsibility for the peace removed the only outside element which might have moderated and reconciled conflicting hatreds and ambitions within Europe. The return to isolation was a revulsion against the universal aspect of the American ideal. It was an attempt, belated and in the event disastrous, to escape to the comfortable parochialism of earlier American practice.

However, even in withdrawing from European politics, the United States continued to exert a decisive pull on European affairs. In the history of reparations and war debts, in American lending, in the American gold and tariff policies, in the far-spreading repercussions of our depression, forces and decisions which we regarded as local and economic in character turned out to be political and world-wide in their consequences. The arbitrary segregation of economic from political problems was fallacious in the nineteen twenties; it was fatal in the nineteen thirties. Even the outstanding triumph of postwar American policy, in putting through the limitation of naval armaments, has proved to be a boomerang. While the Washington Treaty of 1922 assured Britain and the United States of naval parity, it also left Japan supreme in the Western Pacific. When Japan sought to "cash in" on her advantage by turning superiority into outright domination, we had to go on appeasing or else face attack.

In the nineteen thirties, faced by the alarming growth of aggressive forces which could no longer be checked by a frown, the United States began, almost imperceptibly, to re-enter the balance of power. The first step was the adoption

of the Stimson Doctrine. The principle of the non-recognition of changes of sovereignty effected by force was perhaps over-legalistic in its conception, and had little historical justification to support it. But it was designed to introduce a factor of moral restraint by denying to the conquests of the aggressors the recognition of the legitimacy of their acquisitions.¹⁹ Although the Stimson Doctrine has so far been a warning rather than a deterrent to aggressors, its effectiveness will perhaps be greater in the long run than it has been hitherto.

During the World Disarmament Conference at Geneva the United States took two further steps towards bearing some share of responsibility for international order. In April, 1933, our government reversed the stand which it had taken in the Preparatory Commission of 1927, and agreed to accept and to support the international supervision of armaments.²⁰ This new attitude on our part removed one obstacle to the achievement of some sort of international limitation of the new armaments race. A second important step towards international cooperation occurred a month later. The American delegate, Norman Davis, after reiterating the willingness of our government to consult with other nations in case of a threat to peace, now declared that

. . . further than that, in the event that the states, in conference, determine that a state has been guilty of a breach of the peace in violation of its international obligations and take measures against the violator, then, if we concur in the judgment rendered as to the responsible and guilty party, we will refrain from any action tending to defeat such collective effort which these states may thus make to restore peace.²¹

In this roundabout and awkward phraseology the first Roosevelt administration removed one of the main obstacles

to the development of an effective system of collective security. So long as this country had insisted on its traditional neutral rights, including the Freedom of the Seas, the European nations had an additional motive for not obligating themselves to a policy of collective guarantee, for such a policy might well have brought them into conflict, not only with the aggressor, but with the United States. On this reef all attempts to strengthen Article XVI of the League Covenant had foundered. While our government still reserved its own freedom to determine the aggressor, in practice this reservation hardly weakened the concession which it had now made to the principle of collective security.

By these and other modest steps the Roosevelt administration tried to exert American influence on the side of peace and stability. Its conception was summarized in the President's appeal of October 5, 1937, for a "quarantine of the aggressors." Meanwhile, we had officially adopted a rather different policy, that of "see no evil, hear no evil." Drawn up with some, but not all, of the "lessons" of 1917 in mind, and designed to block some, but not all, of the motives for American participation in a new European conflict, the Neutrality Act of August 31, 1935, with its later amendments, was naturally accepted abroad as a reliable indication of the American attitude in case of war. By it the peoples which were trying to maintain a relatively normal and free range of activity were encouraged in the easier course of appeasing the aggressors. Regimes which were deliberately preparing for war, or the threat of war, were led to believe that in a new conflict the decision of 1918 might be reversed more easily through the announced abstention of the United States even from economic participation. The blocking of President Roosevelt's proposals for "cash-and-carry" legis-

lation in July, 1939, encouraged the view in Berlin and Moscow that France and Britain would be forced to accept a new "Munich," this time, at the expense of Poland and the rest of East Central Europe. Of course, the first-line responsibility for preserving the peace of Europe rested, and should have rested, with the powers of Europe. Nevertheless, the United States had a profound interest, if not in supporting the aims of any power or group of powers, at least in preventing any one power from establishing its domination over all of Europe.

There is no need to retrace the steps by which we have come, in a little over two years, to be once again an active protagonist in a world-wide conflict. The choice of our course was a difficult one; the debate was bitter. Even pessimists hoped to the last that the United States could stand to one side. Torn between fear and hope, we appeased Japan, we tolerated restraints and delays in reinforcing France, and later Britain, with equipment, and we were slow to arm. The measure of our danger should have been brought home to us by the fall of France. The lesson that a small margin of time, of equipment, of effort, could mean, for a great nation, the difference between "to be" and "not to be" was spelled out for us. Hurriedly we counted our ships of war, comparing them with what Hitler had available, or could produce in the shipyards of all Europe. Hurriedly we measured ocean distances, from Norway to Iceland, from Dakar to Natal. We examined our resources, now suddenly less imposing when compared with those of a Nazi-dominated Europe. The realization grew that the independence and welfare of the Americas would be in jeopardy if all Europe were conquered by the Axis, and Britain overrun. We began to arm those who were still resisting aggression, and we

armed ourselves somewhat more energetically, still debating whether all this toil was needed, until the issue was decided for us by sudden attack. Now there are two compelling tasks before us: to win this war, if only to save our own hides, and then to rebuild the structure of international relations so as to safeguard the future.

In discussing possible lines of reconstruction, many Americans are haunted by the bitter lessons of our choice in 1919. No doubt, once the crisis is passed, we must expect the debate of the twenty-year armistice to be renewed. But it would be fatalistic to believe that history must repeat itself. Even catchwords die. The old slogan, "To the victor belong the spoils," is now obsolete. Instead, we must constantly remember that "to the victor belongs the responsibility."

Even after the last World War America did not look upon itself as a part of a balance of power. It felt that it was free to interfere in, or, at will, to withdraw from, the states system. The adjustment of thinking to new realities is a slow process. The American intervention of 1917, the defeat of the Central Powers, our own withdrawal from the peace, occurred in quick succession. Although we had helped to decide a major struggle for the hegemony of Europe, we believed that we could now "pull out" and leave Europe to its own devices. Probably a majority of our fellow countrymen believed in all sincerity that the chief advantage in having won the war was to enable us to "go home" and forget about Europe.

The confusion in which our people faced its responsibility for the victory was worse confounded in that the choice of policy was presented to it in terms of altruism *versus* self-interest. We were asked to sign the Covenant more to help others than to help ourselves. Unfortunately, we were

already tired of being altruists. The combined urge to "wash our hands" of Europe's troubles and to go back to "business as usual" was irresistible. Whether or not the League of Nations could have been made to work will probably remain one of the big "ifs" of history. Without American cooperation, the League was left, in part, as a scaffolding of pious hopes, in part, a camouflaged variant of the old balance of power.

Today we realize, as we did not in 1917, or in 1919, that we have become a part of a world balance of power—a balance which has emerged only by degrees. At the beginning of the eighteenth century there were still three distinct balances of power even within Europe: a Western or Atlantic balance, a Northern or Baltic balance, and a Southern or Mediterranean one. By the close of the eighteenth century these three regional balances were by way of being fused into a European interplay of power. The period of the Crimean War marked the absorption of the Balkans and Near East into the balance. During the first World War its operation was extended still further. The United States, through decisive participation in the war, and Japan, through its strategic and economic gains, emerged as active factors in an unsettled world balance. With the involvement of Russia, of China and Japan, and of the United States in the present war, the Far Eastern balance, which had crystallized in the eighteen nineties, has now been fused with its North-Atlantic-European counterpart into a single balance. As realists, we must face the fact that during the last ten years the balance of power has been increasingly manipulated against the United States. We must now manipulate it ourselves, and exert our whole weight in so doing. Otherwise, we shall go under.

On one side of this wavering balance are the largest single empire, the largest contiguous land state, the most populous country, and the most powerful productive unit in the world. On the other are three medium-sized but militaristic states, together with the areas which they have conquered. The present war has shown that, to survive, a great nation requires not only a large population, a great area of land or sea over which to deploy its forces, and a vast and up-to-date industrial equipment, but also the will to win. All these requirements together demand imagination.

It takes imagination to apply effectively the enormously multiplied force of today, to discover the "tight places" in the resources and morale of the enemy, and to identify, in the destructive effort of the present, bases for a more stable future. Despite a widespread belief to the contrary, the major after-effects of this war are not likely to be felt in the military or economic fields. Armaments are soon outmoded. A democratic army relaxes its offensive spirit when the danger has passed. In our industrial civilization the power of economic recuperation is enormous. The sphere in which imagination will be most needed, and probably most scarce, is that of discovering and applying political and social inventions adequate to express the reality of an interdependent world.

So long as human interdependence was expressed principally in a religious or moral belief in the brotherhood of man, or even when that interdependence had come to be implicit in a world-wide division of labor, it was difficult to bring man, the social animal, to act effectively on that assumption.

It is as difficult to foretell the precise forms in which the global interdependence of today may be stated after this

war, as it is to predict the duration of the war and the relative strength of the nations at its close. Even now, however, certain things can be said with some assurance. There is, for example, not much point in discussing how slender trickles of reparations are to be divided among the many nations which have been robbed of their independence and their livelihood. Nor is there much use in debating the future ownership of this or that province or railway-junction. The words "strategic frontiers" have lost their meaning, at least in Europe. Apparently, the European peoples are little interested in the details of a future settlement. They are much more concerned to find some over-all arrangement, to enable them to live and work without periodic wars or threats of war. They feel they must look for guidance and for guarantees to the outside powers, to the powers which, for their own self-preservation, must release Europe from its nightmare.

The four extra-continental powers—Great Britain with the Empire and Commonwealth, the United States, Russia, and China—must bear the responsibility for the victory and for the peace. As yet, there is little evidence to suggest that they have coordinated fully their war-strategy and their war-efforts. Despite the pronouncements of the Four Freedoms and of the Atlantic Charter and of the United Nations, there is still less evidence of their having given much joint thought to their peace-strategy. Prospects for their cooperation in the post-war reconstruction are, I believe, greater than many people seem to think. Each of these four powers possesses a vast area and a great population. In its own way each has blocked out programs of development which depend for their fulfillment on the maintenance of orderly international relations. Each in its own way has had experience in cement-

ing the loyalties of populations of diverse origins and cultures.

Because of the community of language and culture, of institutions and history, there is a strong temptation in this country to think of the war and the peace mainly in terms of an American-British partnership. No one will question but that Britain and America must share a large part of the responsibility of reconstruction, as they have recently taken steps to do in the Caribbean region. However, it would be a serious blunder to underestimate the necessity and the advantage of securing Russia's cooperation in the reconstruction. If we assume a common victory, there is probably but one alternative to an American-British-Russian partnership in European reconstruction. That alternative is the territorial and spiritual division of the continent between the Soviet power in the east and a galaxy of western and central European states under American-British protection. Russia's withdrawal, after this war, into such areas as it could take and hold by force would again be fatal to the stability of Europe. Russian isolationism, potential or real, is just as important a factor as American isolationism. Obviously, the Russians are, like ourselves, fighting to put an end to the gravest possible threat to their national existence. But that fact must not lead us to disregard the dangers we will incur if we fail to secure Russia's cooperation in solving the post-war problems of Europe and of the East.

In Asia, too, the prospect, or threat, of an American-British world-wide partnership holds many dangers. Neither British nor American actions in Eastern countries have been such as to make this idea popular there. Furthermore, a partnership of the English-speaking nations might shortly be confronted by a Russian-Chinese or a Russian-Asiatic

partnership. One aspect of post-war reconstruction will be concerned with the future of the so-called "backward" peoples. In this sphere Russia and China have had valuable experience. Among all the Asiatic peoples the feeling that they must follow their own paths of national and social reconstruction is strong. They will welcome advice and assistance in their development, but that assistance must be given and received in a spirit of equality.

In the nineteenth century the balance of power was centered in Europe. In the twentieth century Europe is in danger of becoming the least effective element in the world play of forces. This situation has arisen through the fruition of several centuries of European conquest and settlement, and through the advancing Europeanization of the rest of the world. There is a grain of truth in Hitler's assertion that he wishes to "unify" Europe in order to restore European hegemony in the world at large. Whether or not this aim was wrong in the first place, the Nazi methods for "consolidating" Europe are self-defeating. Because of the physical aggressions of the Nazis, even more because of their ruthless attacks on the sources of Europe's intellectual and moral vigor, the European continent can now be freed of Nazi force only by extra-European forces. What does that unprecedented fact signify for the future of continental Europe? If victorious, will the four world powers restore the obsolete and ruinous balance-of-power system within Europe? That seems most unlikely.

If peace is defined merely as "the absence of war," there will be an easy way, a lazy way, of assuring peace in Europe. That way would be to combine into a grand alliance, or better still, into a confederation, the peoples who have been con-

quered and oppressed by Hitler, and to let them provide for their own future security by whatever means they find appropriate. That solution would last as long as the memory of Nazi rule outweighed their separate ambitions. It would also contain an element of rough justice. Perhaps we would not like some of the rougher aspects of that justice.

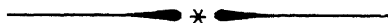
Another solution would be more difficult. It would require our taking on our own shoulders fairly detailed responsibilities. We should have to bear those responsibilities steadily and well. This policy would require us to make large outlays, and to exercise self-restraint. It would not make us popular. It would mean that we would have to lay down broad lines of purpose, and then display qualities of imagination and ingenuity in applying them. Under this more difficult alternative, the aggressor nations would have to be deprived of the capacity for military and economic conquest, but they would receive adequate outlets for their productive and creative energies. The nations now oppressed would have to be restrained from exercising to the full their natural desire for revenge, but they would be assured of the freedoms and the self-respect of which they have been robbed by Hitler and by Japan.

If we are to gain freedom and security for ourselves within the world balance of power, we must fight for these purposes now. But we must also plan and labor for an order which will assure freedom and security for our own and other peoples. Simply to declare the war ended and to go home, each to his own worries and amusements, will be a short-cut to chaos. The best hope for the future is that the will, not to set everything right in one perfect document, but to make this, that, and the other human concern work

better, will not be blacked out by war. If it is true that "necessity is the mother of invention," then our necessity is great, and our will to social and political invention must emerge tempered and strengthened by the trials through which we must go.

THE UNITED STATES AND POST- WAR INTERNATIONAL ORGANIZATION

HERBERT W. BRIGGS



AN OFFICIAL of the Department of State has recently declared that the post-war order is an equation in which all the quantities are “*x*.” It is comparatively easy to draft a blueprint of international order based either on facts as they once existed or on facts as we would like them to exist; but until we can estimate the degree of post-war exhaustion; the consequences of political, economic, and social dislocation; the extent to which whole peoples may be prepared to forego some of the advantages of sovereignty and nationalism in order to gain compensating, but perhaps less obvious, advantages—until the time when these and other factors are more calculable it will be futile to devise blueprints for the new world.

From several sources we have recently had warnings against the premature acceptance of particular proposals to solve the world’s ills.¹ The current cry is for more and better international organization: the League of Nations

failed, therefore we must have another League—"this time with teeth in it"; the disarmament conference failed, therefore we must have another disarmament conference—this time with an International Police Force in the storm cellar; arbitration has failed to correct the evils of international society, therefore we must have more arbitration—this time with compulsory jurisdiction; states were unwilling to sacrifice some of their powers to the League of Nations, therefore we must ask them to sacrifice all their sovereignty and all their nationalism and join "Union Now."

Vilfredo Pareto has written ² that the "eagerness for premature practical application is ever obstructing the progress of science, along with a mania for preaching to people . . . what they ought to do—an exceedingly bootless occupation—instead of finding out what they actually do." Professor Hans Morgenthau adds: "Grandiose legalistic schemes purporting to solve the ills of the world have replaced the less spectacular, painstaking search . . . for the laws which govern the social relations of men; . . . this presumptuous enterprise has contributed nothing to the betterment of international relations, let alone the knowledge of what these international relations actually are."

My purpose, then, will not be to devise a scheme for the salvation of the world: I propose merely to analyse some of the problems and principles, an understanding of which may contribute to the kind of international order we all want. The rôle of law, the rôle of politics, the rôle of force, and the functional and institutional requirements of international government will be examined.

The need for the performance of functions of government in the international sphere I will take as a postulate which requires no demonstration. All states accept the proposition.

Hitler and the Japanese war-lords talk of their New Orders, and the rest of the world is fighting, among other things, for a different conception of world order. The performance of legislative, executive, and judicial functions—not to mention less traditionally phrased functions of public order, security, social welfare, and the reconciliation of stability with change—is as necessary on the world plane as within the state. Nor has the necessity been lacking in the past. In the absence of international institutions, states have undertaken the performance of these functions themselves. For example, the need for security and public order in the international sphere has seldom been challenged, yet the approach has been through national security to a hoped-for international order. Just as within the state it was once believed that “economic man” by pursuing his private profit would ineluctably be working for the public advantage, so the nation-state, by guaranteeing its own security, would inevitably contribute its part towards the establishment of world order. The degree of international order obtainable from the individual pursuit by states of their own national security varied, of course, with the nature of the methods used. A nineteenth-century United States pursuing national security by minding its own business undoubtedly contributed a stabilizing element to the world situation. A French policy of alliances and a British policy of balance of power between opposing alliances, in addition to providing those states with a more or less precarious national security, undoubtedly contributed also to international stability. But national security might likewise be sought through policies of imperialism, conquest, and *Lebensraum*. Here, at least, it was obvious that reliance on national policies of security was not enough to obtain a system of international order. In

any case the security obtainable by some of the methods mentioned was relative. For example, to the extent that Frenchmen might feel secure because their potential war coalition was organized against Germany, Germans felt insecure. Futile to explain patiently to the Germans that if Germany had no aggressive intentions they had no reason for insecurity. Those in whose hands the safeguarding of German security lay—whether democratic, aristocratic, or Nazi—felt an insecurity in the fact that peaceful change was dependent on the will of France. The alternative was change by force.

Perhaps the example I have chosen is a bad one, because Germany did have aggressive intentions; but more than an element of truth remains in the proposition that as the world has hitherto been organized the security of one state was frequently the insecurity of its neighbor; and the balance of power was, at best, precarious.

This is the pattern which has persisted for some centuries—a pattern in which nation-states following individualistic policies were the dominant political facts. True, the nation-states were not without a system of international law, but international law is primitive law and without adequate institutional development. The problem is not so much one of enforcement: except in time of war violations of international law are rare. The real weakness of international law, as Professor J. L. Brierly has observed,⁸ is that international law “is in fact just a system of customary law, upon which has been erected, almost entirely within the last two generations, a superstructure of . . . treaty-made law; . . . customary law can never be adequate to the needs of any but a most primitive society, and the international so-

ciety of today is not, except in the matter of its law, . . . at the primitive stage."

Moreover, a system of law is not identical with a system of government, nor an adequate substitute therefor. What is popularly regarded as the breakdown of international law is a consequence, not the cause, of the present crisis. International law, as Borchard says,⁴ "constitutes but one aspect of international relations, in many respects not the most vital." Although it is concerned with matters such as the recognition of states, jurisdiction over persons and territory, jurisdictional immunities, the status of diplomatic agents, conflicting laws of citizenship, the extradition of criminals, the diplomatic protection of citizens abroad, the conclusion, interpretation, and termination of treaties, the rights and obligations of neutrality, and polite rules for the conduct of warfare, nevertheless, outside its scope we find power politics, nationalism, competition for territory, markets and raw materials, tariff and immigration policies—in sum, the economic and political factors most likely to lead to war. The tendency to regard the international legal system as a rudimentary international government or to blame the system itself for its narrow scope is wide of the mark. It overlooks the fact that law is not a self-generating mechanism; law is the creature of men, and the men who direct state affairs have failed to provide and operate adequate international institutions for the performance of governmental functions.

What progress has been made in the field which I shall euphemistically call "international government"? A critical survey of past practice may aid us in deciding what may be salvaged for the future.

The legislative function in the international field has been performed largely in the absence of an international legislature. Diplomats drafted and signed bilateral and multipartite treaties which were subject to ratification by their governments, but no permanent international legislature of general scope has ever been established to meet periodically for the enactment and revision of rules of law, or the adoption of general policies with reference to public order, public welfare, and peaceful change. General congresses and conferences were called on special occasions—usually at the end of a particularly widespread war—and these congresses (like the Congress of Vienna), in addition to prescribing a peace settlement which was expected to be static, sometimes “legislated” by adopting rules of general law. The Hague Peace Conferences of 1899 and 1907 were significant not for their success (which was much overrated at the time) but because they were intended to initiate a series of periodic “legislative” conferences.

These conferences, however, were not really legislative bodies. The doctrine of the legal equality of states and the doctrine that no state was bound by a new rule of international law to which it had not given its consent had consequences which were fatal to the conception of a functioning international legislature. In practice the doctrines meant equality of representation: one state, one vote. Why, asked a writer in the *London Times* in 1907, should the British Empire, with a population of over 400,000,000 and the largest navy in the world, attend a conference in which a Central American Republic, with a total population of 700,000 and a navy of one second-hand cruiser, had equal voting privileges? The answer may have been given some years later when Senator Henry Cabot Lodge inquired why the

United States should join a League in which the British Empire would have seven votes to one for the United States.

Nor was this all. The rule "one state, one vote" was supplemented by the unanimity rule. Each state held a *liberum veto*: nothing could be adopted except by unanimous vote. If by any chance an international conference did succeed in adopting a project unanimously, the project was still dependent on ratification by each signatory state. As the diplomats phrased it, decisions by conferences were *ad referendum*. If a conference succeeded in "legislating" under these conditions it was usually because the Great Powers exercised a preponderant and frequently high-handed control over procedure and decisions.

Latterly there has been the Assembly of the League of Nations. The Assembly was the organ in which all League Members were represented on a basis of equality. It had the advantage of meeting regularly once a year and was no mere diplomatic conference whose competence died with its adjournment. It developed a continuity of policy and adopted a working technique which made it in some ways more analogous to the legislative body of some governmental system than a gathering of diplomatic representatives. However, even the Assembly did not actually legislate; i.e., it did not have the power to enact laws by majority vote for the international community, or even for League Members. With minor exceptions, the unanimity rule was stipulated in the Covenant. In practice, as Cromwell Riches has revealed in his interesting study, *The Unanimity Rule and the League of Nations*,⁵ the rigors of the unanimity rule were mitigated by "a rather astonishing number of ingenious devices . . . in many cases approximating majority decision." But what was the nature of the resolutions adopted

by the Assembly? A study of Assembly resolutions reveals too frequently that the operative words in a resolution were: the Assembly "notes with satisfaction" or "views with interest" or "observes with regret" or "is painfully surprised." Occasionally the Assembly recommended a principle or invited action or initiated a policy. Even more rarely the Assembly drafted and adopted a treaty, but the treaty was not binding until ratified.

The Assembly was a great step forward. The advantage of having an international deliberative assembly meeting at regular intervals is not to be underestimated. Its failure lay partially in its procedural limitations but more fundamentally in the unwillingness of powerful League Members to permit it to reach decisions which might restrict their freedom of action.

In addition to the quasi-legislative conferences mentioned, there have been in the last seventy years a score or more of international legislatures of limited scope meeting periodically every few years to formulate, adopt, or revise laws and regulations on technical matters. These are the congresses or conferences of the Public International Unions—the Universal Postal Union, the International Telegraphic Union, the International Office of Public Hygiene, the various technical organizations dealing with communications, and social or scientific matters. In these technical fields of obvious common convenience to states lie some concrete and really brilliant achievements—achievements in which the United States has had its share. In most of the Unions the unanimity rule is modified in practice, and in the exceptional case of the Congress of the Universal Postal Union decisions on most matters are actually by majority vote. Moreover, decisions are adopted *ad referendum* only in theory, since

there is a tendency for national postal administrations to put the decisions of the Congress into immediate effect without awaiting ratification.

The work of the Public International Unions is sometimes referred to as international administration but, with some exceptions (such as the international river commissions), their work is less the administrative function of governing persons or localities than the legislative function of creating a body of international administrative law. Here again, a distinction should be made between those conferences which enact general rules of law and those which adopt or recommend international standards with the object of coordinating national laws and administrations. Actual administration has remained largely national, but increasingly in accordance with international standards. Violations of the treaties or regulations adopted are rare.

Very few of the Public International Unions had any connection with the League of Nations, most of them having been created prior to the World War. The operations of some of them were suspended entirely during that war, others only between enemy states. Many of them resumed operations immediately after the Armistice, even before the Peace Treaties were signed.

In the same category of successful international legislation, and, to a certain extent, administration, should be placed some of the non-political activities of the League of Nations in fields such as public health and hygiene, social and humanitarian matters.

Space does not permit here the analysis these activities deserve, but it is noteworthy that, where there exist sufficient inducements to observe law, sanctions are unnecessary. It has also been observed that the international law developed

by the Public International Unions is functional law: it is not the command of authority but an exemplification of the rules of order necessary for the attainment of a specific functional end, for example, the efficient operation of an international postal system. To phrase it another way: the law has been worked out by states, not imposed on them. This approach emphasizes the complete fatuity of attempts, as in the Kellogg Pact, to abolish war without dealing with the causes of war.

Little need be said here of the judicial function in international affairs. It has an ancient and honorable tradition, and one to which, at least until it became a world power, the United States made valuable contributions. The creation of the Permanent Court of International Justice in 1922 with the aid of Elihu Root solved the problem of the composition of the court: judges represent not states but "the principal legal systems of the world." In view of the fact that the Court applies not national but international law the formula is a euphemism designed to prevent an unwieldy court of over fifty judges. When a state which has no judge on the bench is a party to a dispute before the Court, it is allowed to appoint an *ad hoc* national judge. It would seem more appropriate to provide that no judge should sit in a case in which his own country is a party before the Court, but the existing provision was designed to reassure states by having one of their own judges participate in proceedings and decision. The decisions of the Court, as distinguished from one or two of its advisory opinions to the League of Nations, have been uniformly excellent. No problem of enforcing the decisions has ever arisen.

The most serious unsolved problem connected with the international judicial function is not a judicial problem but

the political problem of inducing states to resort to the Court for the judicial settlement of international disputes. The Court has jurisdiction over all disputes which the parties agree to refer to it. In addition, forty-one of the fifty states adhering to the Court accepted its compulsory jurisdiction in carefully restricted types of legal disputes which might arise in the future. The distinction is between consenting only after the dispute has arisen and consenting in advance to the jurisdiction of the Court in certain matters.

Certain international disputes are considered non-justiciable because of the absence of applicable rules of international law. The United States—which unhappily has not yet adhered to the Court—considers appropriate for judicial settlement only disputes which can be formulated as “claims of right”—conflicts of “interest” being considered non-justiciable. Even legal questions are sometimes withheld from arbitration where a state believes that the law is not adapted to modern conditions and that a strict judicial application of the law would lead to an inequitable result. These conceptions have been criticized with considerable acumen by Dr. H. Lauterpacht in his book *The Function of Law in the International Community*. Too often states have employed the rather relative distinction between “legal” and “political” questions as a cloak for mere unwillingness to submit a question to impartial determination.

Nevertheless there are real limitations on the rôle of the judicial function in international affairs. International law is not a system of criminal law, but is more analogous to civil law. An international court is a proper forum for lawsuits by one state against another, but is probably an inadequate instrument of international government for the application of punitive sanctions. It seems appropriate to

add that more flexible instruments of international government than a court can be devised to deal with clashes of policy.

Bearing these limitations in mind, can the compulsory jurisdiction of the Court be extended? The theoretical bases of a system of law which endows its subjects with substantive rights without providing the procedural remedies necessary to secure the enjoyment of those rights, require searching re-examination. Professor Gerhart Niemeyer, of Princeton, in his recent study ⁶ of "the unreality of international law and the unlawfulness of international reality," points out that many of the difficulties of traditional theory are due to a "permanent and never ending attempt to decide the undecidable issue between the interest of the particular state . . . and the standard of the collectivity . . . Thus in its very foundations, the present system of international law harbors insoluble antinomies: individual *vs.* community; nationalism *vs.* internationalism; isolationism *vs.* collectivism. The problems arising out of these antinomies can in themselves never be solved . . . but will simply become insignificant in the light of a changed outlook." The criterion of legal order must be function, not interest. "It is not the separate existence of states that requires international rules and calls for international regulation: international law is needed in so far as there are problems of order and relationship transcending the single state, in so far as there is inter-relatedness between nations."

The importance of such attempts to brush away the cobwebs of traditional conceptions is not to be minimized. Whether Niemeyer's particular approach is partially right or wholly wrong is less important than the fact that his study is symptomatic of a freshening breeze in legal science—a

breeze which may in time reach even the chancelleries which have the power to take action.

In the meantime we are faced with a fact: no state can be sued without consent given either before or after a dispute has arisen. Two approaches are possible to the problem: inducement or compulsion. A compulsory system would sooner or later break down. For example, it is conceivable that the spirit prevailing at the peace conference might cause the incorporation in a treaty of the principle of racial equality which Woodrow Wilson denied Japan at Paris. Yet it seems unlikely that the United States would permit Japan to hale it into court for some years to come over the legal question of whether our ban on Japanese immigration into the United States was in conflict with the stipulated principle of racial equality. A truly compulsory system would then require Canada, Australia, and Great Britain—among others—to use their armed forces against the United States until we accepted both the jurisdiction and the decision of the Court. But after having fought us into the Court, they might suddenly have to turn their forces against Japan—if we won the case.

The conclusion seems irresistible that acceptance of the so-called compulsory jurisdiction of the World Court will be optional even after this war. Certain questions will not be submitted to arbitration; the development of compulsory jurisdiction will be gradual; but in the long run inducement and education will be more efficacious than force.

The Permanent Court of International Justice is at present in a state of suspended animation, with the Registry and the President in Geneva, instead of The Hague. The Court can meet immediately after the war without further action by states. The future peace conference may well be able to

secure a wider acceptance of the compulsory jurisdiction of the Court. The United States, as a testimonial of its good will, might properly submit to the Court, by executive agreement with other states, any international legal claims outstanding at the end of the war, even prior to any action by the Senate on the still pending World Court protocols.

Turning now to the executive function in international government—and under that rubric I would include not merely the enforcement of international law but the larger problems of public order, security, peaceful change, and aggression (to mention only political matters)—we face problems which are not new, but towards the solution of which less progress has been made. Indeed, in employing the term “executive function” I am sometimes fearful that I am forcing historical facts into a pattern which may exist only in the mind of the narrator.

Let me illustrate what I have in mind with a quotation from Edwin Dickinson’s *The Equality of States in International Law*:⁷

“Prior to the French Revolution only the vaguest notions of supernational authority had made their appearance in European politics. The existence of an interdependent society of nations with common interests was recognized at Westphalia in 1648. The balance of power was accepted as the basis for common interests. It was to be preserved by means of international guaranties and intervention . . . The system of guaranties and intervention by the more powerful states provided a very primitive machinery for checking disorder after it had become acute, but it lacked the most rudimentary essentials of an organization capable of anticipating the event and exercising a supervision over the society of nations in the common interest. The idea of cooperative supervision had its first practical application in Europe during the Napoleonic wars.”

At the Congress of Vienna all Europe except the Turks had representatives, but the Great Powers determined organization and procedure and made decisions:

"The great powers rearranged the map of Europe, restored dynasties, confirmed the partition of Poland, united Belgium with Holland, neutralized Switzerland, created the German Confederation and prescribed rules of international law with respect to the free navigation of rivers, the rank of diplomatic representatives, and the suppression of the slave trade."

As Lord Palmerston said on a later occasion, at Vienna the smaller states "were all obliged to yield to overruling power and to submit to decisions which were the result, as the case might be of justice or of expediency, of generosity or of partiality, of regard to the welfare of nations, or of concession to personal solicitations."

Sporadically throughout the nineteenth century a sort of European executive council of Great Powers functioned through the Confederation, and later through the Concert of Europe, handling the Near Eastern question, freeing the Balkans from Turkish rule, and limiting or liquidating crises which threatened the public order. After 1880 the Concert waned and Europe gradually split into rival camps.

To see in this pattern a representative organ of international government operating with responsibility to the European community of states would certainly be to see more than existed; but the idea it suggests of an executive council bolstered up with the preponderant power of the great states and responsible to the community of nations is a legitimate aspiration.

The Council of the League of Nations fulfilled this aspiration only in part. Since the Council was theoretically co-

ordinate with the Assembly, although usually a more potent influence on the formation of League policy, the principle of responsibility of the smaller organ to the larger received no marked development. Nevertheless for the first time in history an international organ of states, acting upon the basis of jurisdiction conferred by the community of states, and in conformity with certain established principles (which were not always observed), met periodically three or four times a year to consider the state of the world, the prevention and settlement of political and economic disputes, the development of international law, the protection of minorities, the development of mandated peoples. Despite its shortcomings the student of international government can only conclude that such an organ is both desirable and feasible. The mere fact that such an executive council has existed and operated—however inadequately—has had a tremendous influence on public conceptions of what is needed in post-war organization.

This brings me to a consideration of several important questions which must be weighed before we can discuss intelligently any plans for the future. Upon what principles should international organization be based? What rôle should be assigned to collective force within the organization? In what form should the organization be cast? And—admitting that feasibility is relative—what is feasible?

In discussing the fundamental principles upon which to base a system of international government we can learn much of value from the Covenant of the League of Nations. Earlier in this paper I stated that reliance on individual policies of national security was an inadequate method of establishing a system of world order. By posing the problem in terms of national interests and national purposes attention was di-

verted from the functional operation of a world system of public order. Prior to the World War every treatise on international law contained a section on the fundamental rights of states. The natural rights of man to life, liberty, and the pursuit of happiness were transmogrified into fundamental rights of states to existence, independence, intercourse, and equality. Quite aside from the fallacies involved in this intellectual legerdemain, no guarantees of these supposed fundamental rights existed, save insofar as each state through force or politics was able to look out for itself. The right of a state to existence was supposed to be a fundamental legal right, but not until Article X of the League of Nations Covenant stipulated that "the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League" was an attempt made to provide a collective guarantee, or even practical recognition, for a hitherto meaningless assertion. Other articles of the Covenant set up institutions and established principles for the execution of this guarantee.

Theoretically this was a tremendous step forward. In practice the collective guarantee was a dead letter from the very beginning. Indeed, long before Manchuria, Ethiopia, Austria, or Czechoslovakia became front-page news, the Fourth Assembly of the League of Nations in 1923 made sure that the obligation would not become too inconvenient, by going on record that "it is for the constitutional authorities of each Member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of Members, in what degree the Member is bound to assure the execution of this obligation by employment of its military forces."

For some years the League Council continued to interest itself in the settlement of international disputes. It developed a really admirable technique under Article XV of the Covenant for handling disputes of a political nature. Instead of the rigid procedure which is adapted to legal disputes, of hearing the parties and making an award on the legal merits, it employed the more flexible procedures of investigation, conciliation, compromise, recommendation, and diplomatic pressure. In this manner it succeeded in settling—or postponing—over thirty international disputes. This record is obscured by the later failures of the League, and can probably be explained by the fact that the parties to the disputes in question were all small states. The first real challenge by a Great Power—Japan in 1931—caused the Council to abandon its own procedures and techniques in favor of appeasement.

Another admirable principle in the League Covenant is that contained in Article XII by which the Members of the League agreed that before resorting to war they would submit any dispute likely to lead to a rupture either to a court for judicial settlement or to the League Council for inquiry. Coupled with this pledge was Article XI of the Covenant which gave the League jurisdiction over “any war or threat of war” or any circumstance threatening to disturb international peace. These provisions lead directly to the most difficult problem of international organization—the rôle of collective force or sanctions.

In approaching this problem it will be useful to consider what force cannot do as well as what it can do. For example, it is easy to overemphasize the importance of punitive sanctions in answering the question why obedience is generally yielded to law. The jurisdictional immunities of the British

ambassador in Washington or the Russian diplomats in Tokyo are customarily granted without any show of force. Indeed, it is difficult to see how the immunities could be secured by a display of force. Whatever the reasons—reciprocity, self-interest or morality, habit of law observance or fear of the consequences—and whether we are considering national law or international law, we shall find that the actual employment or even the threat of force is the exception, not the rule, in securing obedience to law. It is even more obvious that in the daily performance of governmental functions force and the threat of punitive sanctions play a minor part.

Having said so much—that neither a functioning system of law nor a civilized system of government is based on the employment of force—it will be well to ask what force can do. Force can win a war; but can it solve the problem of the causes of war? How many of the peacetime problems of international relations will yield a solution to the application of collective force? These questions suggest that although force may be incapable of solving problems, force may be necessary to establish a situation in which government can function. Our problem is not so much one of law enforcement, as it is the larger one of public order. It is protection against violence that is essential. This means that collective force may occasionally have to be employed against a recalcitrant state.

Now I have merely stated a conclusion, not solved a problem. Our difficulties are only beginning. There are seductions in the oft repeated words “the collective might of the international community.” There is an implication that sanctions are impersonal and automatic; that problems of when and what and how can be solved by putting certain stipulations into a treaty; and that sanctions will seriously

injure only the state against which they are applied. This last point is important if the decision when to apply sanctions remains in the keeping of each individual state as it did under League procedure. Even if the decision were to be transferred to an international body like the League Council, either that body is dependent on national contingents or it must have an international army of its own. I cannot conceive of an international army large enough at all times to defeat the German army or the Russian army unless the scheme for an international police force—army, navy, and air force—is coupled with an effective scheme for national disarmament. I can conceive of disarming Germany and Japan after we have defeated them, but I doubt whether Russia will give up her army or air force, or whether Britain or the United States will give up their navies or air forces in the calculable future. Plans for limiting states to “defensive” armaments and giving the international police force a monopoly of “heavy” artillery, “military” planes, tanks, and warships are based on no foreseeable realities.

This means then that if we are to have sanctions their employment depends on the cooperation of states. Now I think it is fair to conclude that one of the principal reasons why sanctions were not organized against Japan in 1931 or against Germany over the Austrian or Czech questions was that the French and British Governments foresaw that sanctions against Japan meant a naval war such as that now raging in the Pacific, and that sanctions against Germany meant fighting as bloody and bitter as is now raging between Germany and Russia, and war conditions such as now exist in England. I am not condoning what they did. I am merely pointing out that sanctions are not impersonal disciplinary measures. Nor did the application of carefully restricted

economic sanctions against Italy prove the contrary. The failure of the Italian Government to declare war against Britain and France in that case can probably be attributed to its knowledge that Laval and the British Tories could be counted upon to prevent the League from pressing Italy hard enough to keep her from acquiring Ethiopia. As it turned out they pressed her only hard enough to throw Mussolini into the arms of Hitler.

It does not necessarily follow that states will repeat these particular mistakes in the future. Sanctions or the threat of sanctions may be very effective against small states. Possibly a sufficiently determined group of states might even apply sanctions against a Great Power—with or without war. No appraisal of the rôle of collective force in the functioning of a system of international government should disregard any of these possibilities; but it remains true that effectively organized sanctions are an end-product of international organization, not a beginning. The dilemma lies in this: organized force may sometimes be necessary so that government may function; but unless there is some likelihood that problems of territorial and economic adjustment, treaty revision and peaceful change will be satisfactorily solved by international action, sanctions will have the appearance of merely preserving the *status quo*. Neither stability nor change is an end in itself.

A final question has to do with the form of international organization. If we are to have the kind of peace we want—a peace which is not merely the avoidance of future wars, a peace which will permit men to find economic security and to live on a human plane—we must provide institutions of international government through which men may work out social, economic, and political problems which are incapable

of solution by individual states. Ideally, the form of organization should be that which is best suited to ensure the performance of the particular function envisaged. It is more probable, however, that we will be limited both by the facts as they exist and by the necessity of establishing that system—however unideal—which shows the most promise in the circumstances.

Unless by the time peace comes the United Nations have merged into a polyglot United Nation—a most unlikely prospect—a post-war system based on facts will probably be founded on the national state as the basic unit. I wish to state briefly why I think this will be, what the alternatives are, and what the consequences are likely to be.

Ethnic and cultural nationalism are too deeply rooted in the mind and heart of man to be lightly exorcised or casually ignored. The evils of nationalism—particularly of economic nationalism—are evident to many educated men, but there is currently a tendency on the part of a few zealots to underestimate the advantages of the national state. Nations learned by hard experience that the only guarantee of ethnic existence and cultural independence was political independence. That was the meaning of the principle of self-determination. Is it likely that the German occupation of the Netherlands, Norway, Poland, or Greece—to name only a few—has stilled this aspiration? It seems more likely that a more intense cultural nationalism will be coupled—if the lesson has been learned—with a European or international guarantee of national security. I am aware of the difficulties of international guarantees. I agree with Professor F. L. Schuman ⁸ that to pledge in the name of self-determination only a resumption of the anarchy of power politics is to promise

nothing relevant to the needs of desperate peoples. But what are the alternatives?

The alternatives to basing post-war organization on national states are a world state, federal union somewhat less than world-wide, and Anglo-American dictatorship and imperialism. Each of them has its advocates, though the arguments for them are often stated in more euphemistic terms than I have employed. To me the idea of a world state, even with a federal form of government, is neither feasible nor desirable. The state universal, like the church universal, might substitute a drab greyness for the infinite color of national variety. If in the future it becomes desirable to masses of men—Japanese and British, Hindus and Germans, Americans and Arabs, Russians and Ethiopians—to live under the same form of government (presumably democratic), its feasibility can be re-examined in the light of conditions which do not now exist.

One of the chief objections to a semi-world state composed of democracies is aptly stated by Professor Percy E. Corbett in his admirable little book *Post-War Worlds*:⁹ "By its exclusion of the totalitarian States it would sharpen and perpetuate the division of the world into democracies and dictatorships," each group competing for the adherence of unattached political units. Where, for example, would we find Soviet Russia?

The same objection applies to the proposal that the solution for the world's political and economic ills is a benevolent Anglo-American dictatorship and imperialism. Americans, at least, would soon weary of policing an ungrateful world. This is not to say that at the peace conference and for some years thereafter Anglo-American initiative

may not exercise an enormous influence on the settlement. I merely suggest—taking the long view—that if the only form of world organization we can envisage is one in which Anglo-American power is relied upon to police the world, we shall eventually have failed to win the peace. The restless spirit of other peoples—and I am thinking not merely of Germans or Japanese—would not long fail to challenge a British-American hegemony.

It is my conclusion, then, that on grounds of feasibility and the likelihood of success, the post-war organization will most probably be based on the state as the basic unit. The principal consequence from the point of view of form is that the organization will be a confederation or league rather than a super-state. Membership will be voluntary but open to all states which wish to join. I fail to see, for example, how either a defeated Japan or a victorious United States could be forced over a long period of time to participate in the league's work.

This, no doubt, will seem to many to be merely a repetition of the mistakes of the past. What makes me think that since the league form failed once, it would succeed at a second effort? I do not know that it would. I am merely suggesting that, compared with the alternatives, it promises more likelihood of adoption and better chance of successful operation in the long run. I am not at all impressed with the argument that the League of Nations failed because it was a confederation instead of a federal union. The theoretical consequences of the orthodox distinction between them can be overemphasized by a too mechanistic conception of government.

In fact, I have never been too disillusioned over the fail-

ure of the League. The most remarkable thing about the League, as Viscount Cecil has observed, is not that it failed, but that it so nearly succeeded—in a number of matters. The failure of the League of Nations was in large part a failure to regulate matters which had never in human history been regulated by international law or controlled by international institutions of government. The failure was partially a failure to solve procedural problems which are not insoluble. Even more fundamentally the failure was due to the fact that the institution was allowed to be no better than the states which composed it. There is more truth than humor in Lord Hugh Cecil's letter to the editor of *The Times*. "Sir," he wrote, "we do not like the way the French treat the League as a sort of particular umbrella, valuable for keeping France out of the wet, but, when not so needed, to be kept rolled up and used only for gesticulation." Unfortunately the statement might have been applied equally well to Great Britain, except that the umbrella became a symbol of something less than gesticulation.

It is a part of the current mythology that it was the absence of the United States from Geneva which defeated the League. The almost complete absence of any evidence to prove what might have happened if something else which never happened had happened, has caused the proponents of this view to generate more heat than light. The most that can be said for this view is that our absence served League Members as a valuable pretext for disregarding their own obligations under the Covenant. The League was destroyed by its own Members, not by the Axis, not by the United States, nor yet by any inherent flaw in its form. A world state could fail just as badly. Even assuming that it were possible to abolish

sovereign states and create a world state, nations—the ethnic units—would remain. We would have gained nothing by changing the name of war to civil war.

The overemphasis on the form of organization is based on a failure to note that it is men who run institutions. Realization of that fact means that our task is both easier and more difficult: more difficult because re-education and re-orientation of thought are a slow and difficult process; easier because we can start working without the perfect form of organization which will long elude our grasp.

This approach has the advantage of starting where we left off, of salvaging the good from what is familiar, of profiting from familiar mistakes. The least we can do is to provide organs and institutions to which states may resort for the hard task of seeking peaceful solutions of common problems. The least the United States can do is to cooperate in the task.

A legislative body, a court, and an executive council will be necessary. Possibly an International Development Association may be agreed upon for the governance of a pool of colonial areas in the East Indies, the Philippines, and Africa. Perhaps an International Economic Organization can be formed on the lines of the International Labor Office to deal first with problems of economic demobilization and dislocation and then with economic reconstruction and development. An International Minorities and Migrations Committee might be formed. The amount of work to be done and the nature of the problems to be solved are beyond the capacity of any one state acting alone. Either the problems will be solved by internationally coordinated action or they will remain unsolved. Whether states will participate will be partly a matter of inducement and benefit, partly a matter

of education, occasionally a matter of organized pressure. The economic and social conditions which will follow this war—particularly the tremendous development of governmental planning and governmental control over national economies—may well render it easier for states to participate in international planning. Some of the organizations created to win the war may wisely be retained and adapted to a peace economy. Some short-cuts to world government may be possible.

In establishing institutions, function, feasibility, and flexibility should condition form. Regional leagues—or even federations—within the world league would appear to be feasible and desirable. Functional leagues such as those dealing with telecommunications, postal matters, and the traffic in narcotics would be world-wide rather than regional. Economic sanctions would either have to be semi-universal or the right of pacific blockade established. Military sanctions could be organized on a regional scale more effectively than on a world-wide scale. Occasionally military sanctions would have to be world-wide to stop a combination of major powers. Within the world league individual states might well be members of several regional and functional leagues. The United States, for example, might conceivably be a member of the world confederation, a Pan-American league, a conference of the Pacific, a colonial association, and some score of functional leagues.

I have stated that short-cuts will be possible at the peace conference in the creation of institutions, but organization will not solve problems; it will merely provide the channels through which men of good will can work them out.

In conclusion: if we view the history of international government in its proper perspective; if we remember the long

centuries prior to the First Hague Peace Conference of 1899 and compare with them both the remarkable achievements and the colossal failures of the last forty years, neither the effects of two world-shattering wars nor the collapse of a League of Nations whose very failure has clarified our perceptions of the essential problems can deter us from attempting a better-ordered world.

NOTES

The Impact of War on the Constitution

1. Letter to A. L. Hodges, 1864, Nicolay and Hay, *Abraham Lincoln: Complete Works* (New York, 1902), ii, 508.
2. 254 U.S. 325, 1920.
3. Hines v. Davidowitz, 312 U.S. 52, 1941.
4. Message to the Legislature, January 7, 1942.
5. E. S. Corwin, *The President: Office and Powers* (New York, 1940), 155.
6. Letter to Erastus Corning, 1863, Nicolay and Hay, *Abraham Lincoln: Complete Works* (New York, 1902), ii, 350.
7. *Third Report of the Committee upon the Duty of Courts to Refuse to Execute Statutes in Contravention of the Fundamental Law*, January, 1917, 23.
8. Z. Chafee, Jr., *Free Speech in the United States* (Cambridge, Mass., 1941), 385. I have used this excellent book extensively, and commend it to all readers.
9. From a speech delivered at the National Conference of Social Work, Atlantic City, N.J., June 2, 1941, reprinted in *The Bill of Rights Review* (1941), ii, No. 1, 16.
10. Act of June 15, 1917, 40 Stat. at L. 217.
11. Act of May 16, 1918, 40 Stat. at L. 553. Though usually called the Sedition Act, this was passed as an amendment to the Espionage Act.
12. Act of June 28, 1940, 54 Stat. at L. 670.
13. West Virginia Code, 1937, § 5912. Quoted by Chafee, *op. cit.*, 165.
14. See the fifty-five page pamphlet entitled: *A Report Upon the Illegal Practices of the United States Department of Justice*, 1920. This was published by the National Popular Government

League, Washington, D.C. The report was signed by Rome G. Brown, Zechariah Chafee, Jr., Felix Frankfurter, Ernst Freund, Swinburne Hale, Francis Fisher Kane, Alfred S. Niles, Roscoe Pound, Jackson H. Ralston, David Wallerstein, Frank P. Walsh, and Tyrrell Williams.

15. *New York Times Magazine*, September 21, 1941, 8.
16. *New York Times*, December 17, 1941, 24.
17. *Schenck v. United States*, 249 U.S. 47, 1919.
18. *Ibid.*
19. *Abrams v. United States*, 250 U.S. 616, 1919; *Schaefer v. United States*, 251 U.S. 468, 1920; *Pierce v. United States*, 252 U.S. 239, 1920. . .
20. *Herndon v. Lowry*, 301 U.S. 242, 1937.
21. *Harry Bridges v. California* (with which was merged *Times-Mirror v. California*), decided Dec. 8, 1941.
22. 249 U.S. 47, 1919.
23. Chafee, *op. cit.*, 35.
24. *Gitlow v. United States*, 268 U.S. 652, 1925; *Near v. Minnesota*, 283 U.S. 697, 1931.
25. This dates back to Marshall's decision in *Barron v. Baltimore*, 7 Peters (U.S.) 243, in 1833.

The Impact of War on American Labor

1. Leo Wolman, *Ebb and Flow in Trade Unionism* (New York, 1936), 16. ' .
2. For detailed account of labor's representation on the various government agencies that were established during the period of the defense effort, and its participation in the formulation of policies by these agencies, see International Labour Office, *War-time Developments in Government-Employer-Worker Collaboration* (1941), 86-120.
3. Estimates of the total volume of unemployment vary greatly, but all of them substantiate the generalization of the above sentence. In April, 1941, the Congress of Industrial Organiza-

tions estimated the number of unemployed to be 9,100,000; the American Federation of Labor placed the figure at 7,600,000; and the National Industrial Conference Board at 5,400,000. On the other hand, an O.P.M. release in June, 1941, placed the number at between 3,500,000 and 4,000,000. But according to the United States Bureau of Labor Statistics, some 6,000,000 persons were unemployed in May, 1941 (International Labour Office, *The I.L.O. and Reconstruction*, 1941, 24). Differences in methods of estimate, particularly with reference to the total labor supply (i.e., those employed and those willing and able to work but not having jobs), account for these differences in conclusion as to the total volume of unemployment.

4. *Ibid.*
5. *Monthly Labor Review*, liv (February, 1942), 532.
6. Between 1913 and 1920, the cost of living in the United States, as measured by the United States Bureau of Labor Statistics index, increased from 100 to 217; in other words, the wage earner's dollar in 1920 purchased less than half the goods and services it commanded in 1913.
7. For details, cf. International Labour Office, *The I.L.O. and Reconstruction*, 28-33.
8. The Canadian wage policy recognizes the inevitability of sacrifices by labor, but at the same time seeks to protect minimum standards of living. An Order in Council of December 16, 1940, stabilized wages by enjoining the Boards of Conciliation and Investigation to regard as generally fair and reasonable the highest wage rate between 1926 and 1940. Such wage rates were to be supplemented by a separate cost of living bonus of \$1.25 a week for each increase of five per cent in the cost of living. On October 25, 1941, a new wage stabilization order extended the coverage and made bonus payment and wage stabilization compulsory by the introduction of penalties. Another feature of the Canadian wage policy is the attempt to maintain the real wages of the workers who have been receiving not more than \$25 a week, on the assumption that expenditures up to that sum are chiefly for necessities.

9. Such as the necessity of hiring inexperienced workers, the anticipated increase in labor turnover, and the payment of overtime rates. All these are characteristic of an active labor market.
10. In December, 1941, the cost of living for moderate-income families, as an average over the country as a whole, was 12 per cent higher than in August, 1939, the month before war broke out in Europe. *Monthly Labor Review*, liv (February, 1942), 455.
11. Cf. J. M. Keynes, *How to Pay for the War* (New York and London, 1940). The principle of deferred pay, or compulsory war loans, was approved by the British government in April, 1941.
12. Cf. H. M. Vernon, *Industrial Fatigue and Efficiency* (London, 1921) and *Health and Efficiency of Munitions Workers* (Oxford, 1940).
13. Dr. H. M. Vernon, the recognized British authority on the relation of hours of work to both productive efficiency and the well-being of the workers, has suggested the following as desirable maxima during the war: for women, 48-54 hours per week; for girls of 16 and 17 years of age, not more than 48 hours; for youths of 16 and 17, 48-54 hours per week and perhaps more for light work; for skilled men whose work is comparatively light in the physical sense, 60 hours per week; and for men performing heavy work, 48-54 hours per week.
14. For detailed account of this experience, cf. International Labour Office, *The I.L.O. and Reconstruction*, 33-38.
15. However, there had been no great extension in hours actually worked in the United States down to the end of 1941. In August, 1940, average hours actually worked in manufacturing were 38.4 (*Monthly Labor Review*, li, November, 1940, 1268) and in November, 1941, they were 40.3 (*ibid.*, liv, February, 1942, 539).
16. In the United States, regulations of the hours of adult males are, with a few exceptions, not absolute but are achieved through the penalty overtime device.
17. Secretary of Labor Perkins, in a press conference statement reported in the morning papers of March 12, 1942, estimated that not much more than three per cent of the workers subject

to the Federal Wages and Hours Act were actually receiving the time-and-a-half overtime pay.

18. Nevertheless, it is of significant volume while the process of plant conversion continues. The National Industrial Conference Board, in estimates released to the papers of March 14, 1942, placed the number of persons laid off in January, 1942, at between 300,000 and 500,000. The Michigan automobile-producing area contributed a considerable portion of those displaced that month by plant conversion.
19. Although the government policy of twenty-five years ago expressed itself for the most part in the policy of Boards established by Executive Order, instead of being—as it now is—expressed in statutory law.
20. Among the specific responsibilities of the councils, according to the proposal, were to be allocation of orders, determination and allocation of expansion needs, scheduling of production rates, imposition of priorities, settlement of industrial relations questions, and determination of the labor supply.
21. The United States Bureau of Labor Statistics data show that the number of strikes beginning in 1938 was 2,772, in 1939 2,613, and in 1940 2,508. There was some—but not a great—increase the first nine months of 1941, then a substantial decrease after the attack on Pearl Harbor. The Bureau's preliminary estimates showed 175 new strikes in December, 1941, as compared with 300 the preceding month. *Monthly Labor Review*, liv (February, 1942), 413.
22. In October, 1941, for example, 0.29 per cent. *Ibid.*, 414.
23. The procedure for settlement of disputes, as outlined in the Executive Order creating the War Labor Board, involves (a) direct negotiations by the parties or resort to the procedure provided for in a collective-bargaining agreement; (b) efforts at adjustment by the United States Conciliation Service; and if a dispute is not then settled (c) certification of the dispute to the Board by the Secretary of Labor. The Board may employ mediation, voluntary arbitration, or arbitration under rules it has established.

The United States and the British Empire: Past and Present

1. The full phrase was: *Irregulare aliquod corpus et monstro simile*.
2. Cp. A. B. Hart, *School Books and International Prejudices* (Am. Assn. for International Conciliation, 1911) ; C. Altschul, *The American Revolution in Our School Text-books* (New York, n.d.).
3. On June 6, 1919, the Senate passed Senator Walsh's resolution: "Resolved, that the Senate of the United States express its sympathy with the aspirations of the Irish people for a government of its own choice."
4. Quoted in B. A. Reuter, *Anglo-American Relations during the Spanish American War* (New York, 1924), 104.
5. L. Denny, *America Conquers Britain* (New York, 1930), 3. This book went into three printings in the year of its publication.
6. The total of world exports and imports rose from 14.8 billion dollars in 1880 to 20.1 billion dollars in 1900 and 40.4 billion dollars in 1913.
7. In 1941 Assistant Secretary of State Berle had much trouble explaining to Senators that a German conquest of Britain would not mean that Germany would then control the Canadian part of a St. Lawrence Waterway.
8. Cp. E. H. Carr, *The Twenty Years' Crisis* (London, 1939), 101. In 1906 Sir Edward Grey wrote to Theodore Roosevelt that "some generations of freedom on both sides have evolved a type of man and mind that looks upon things from a kindred point of view." Earlier in 1904 Admiral Mahan had written to Roosevelt that "the United States has certainty of a very high order that the British Empire will stand substantially on the same lines of world privileges as ourselves . . ."
9. "When the consequences of a principle are exhausted, and the edifice which had rested upon it for centuries is threatened with ruin, it behooves us to shake the dust from our feet, and hasten elsewhere." Mazzini.

A Reappraisal of the Far Eastern Policy of the United States

1. Limitations of space prevent my listing all the books and magazine articles which have been consulted during the preparation of this paper. However I can not refrain from mentioning the three books which I have found most useful: Tyler Dennett, *Americans in Eastern Asia* (New York, 1922), A. Whitney Griswold, *The Far Eastern Policy of the United States* (New York, 1938), and T. A. Bisson, *American Policy in the Far East, 1931-1940* (New York, 1940).
2. *Treaties and Conventions Concluded between the United States and Other Powers* (Washington, 1889), 168.
3. *Foreign Relations of the United States, 1900*, 299.
4. Department of State, *Press Releases*, No. 119 (January 9, 1932), 41-42.
5. *The Department of State Bulletin*, 5 (December 13, 1941), 462-463.

The United States and the Balance of Power

1. Charles A. Beard, *The Idea of National Interest* (New York, 1934), 29.
2. Alexander Hamilton, John Jay, and James Madison, *The Federalist*, edited by Henry Cabot Lodge (New York, 1895), 63.
3. All quotations from the Message of December 2, 1823 are taken from *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, edited by James D. Richardson (Washington, 1896), II, 218.
4. Dexter Perkins, *The Monroe Doctrine, 1823-1826* (Cambridge, 1927), 76.
5. *Ibid.*, 125.
6. *Ibid.*, 190-191.
7. E. N. Curtis, *The French Assembly of 1848 and American Constitutional Doctrines* (New York, 1918), 69-78.
8. J. G. Gazley, *American Opinion of German Unification, 1848-1871* (New York, 1926), 385.

9. *Ibid.*, 23–26; R. C. McGrane, “The American Position on the Revolution of 1848 in Germany,” *Historical Outlook* (1920), XI, 333–339.
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